

*United States Court of Appeals
for the Second Circuit*



APPENDIX

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United States Court of Appeals
FOR THE SECOND CIRCUIT

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN,
Petitioner-Appellee,
against

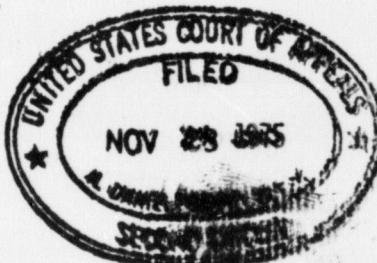
A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC.,
Respondents-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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PAGINATION AS IN ORIGINAL COPY

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DOCKET ENTRIES

DATE	NR	ENTRY
06-24-75	(1)	Filed Complaint and issued Summons.
06-24-75	(2)	Filed Petitioner's affidavit & show cause order for preliminary injunction etc. ret. 6-30-75 room 906.
6-30-75	(3)	Filed Petitioner's memorandum in support of application for preliminary injunction.
6-30-75	(4)	Filed respondents' ANSWER, counterclaim & cross petition. SMM&P
6-30-75	(5)	Filed Memorandum of law in opposition to motion for preliminary injunction.
17-02-75	(6)	Filed affidavit of M.J. Spitzer on behalf of petitioner.
17-02-75	(7)	Filed " " " " in reply & support of show cause order.
17-02-75	(8)	Filed Petitioner's memorandum in support of proceedings to compel arbitration.
17-02-75	(9)	Filed Respondents' supplemental memorandum of law.
17-02-75	(10)	Filed affidavit of J.N. Johnson in opposition to application for Temporary injunction.
17-08-75	(11)	Filed Order that petitioner's time to answer with respect to respondent's answer containing their counterclaim is ext. to 8-1-75. Bonsal,J.
7-24-75	(12)	Filed Ex-Parte Order extending petitioner's time to answer with respect to respondents answer containing their counterclaim & cross petition dated 6-30-75 in ext. until 10 days after entry of this court's order upon petitioner's motion to compel arbitration. Bonsal,J.
17-24-75	(13)	Filed Memorandum #42843: INV's motion for a preliminary injunction is denied as against Smith without prejudice to renewal should it appear that Smith is wrongfully divulging confidential information given to Armor by INV. INV is directed to post a bond in the sum of \$250,000 as security for costs & damages which may be suffered by Armor in the event that it is found to have been wrongfully enjoined. F.R.Civ. p. 55(c). Settle order on notice. Bonsal,J. m/n
08-06-75	(14)	Filed Order that petition to compel arbitration is granted to extent that respondent Armor Elevator Co., Inc is compelled to proceed with arbitration of all issued raised in Demand for Arbitration of 6/17/75, etc. Ordered portion of petition to seek order to compel arbitration by A.O. Smith Corp pursuant to Demand for Arbitration is denied; ordered respondent ALCI name an arbitrator within 20 days of date of entry of order. Ordered that petitioner post bond in sum of \$250,000 within 20 days of date of order, etc. Bonsal,J(mn)
08-08-75	(15)	Filed Petitioner's Notice of Motion re: order dismissing purported counterclaims, etc. ret. Rm. 1505, 9/22/75, 9:30 A.M.
08-18-75	(16)	Filed Petitioner's Memorandum in support of motion to dismiss respondents' counterclaims.
09-05-75	(17)	Filed Respondent Armor Elevator Co. notice of appeal from each & every part of order filed 8-6-75: Mailed notice to Spritzer & Feldman.
09-18-75	(18)	Filed Respondent Armor Elevator Co. notice of cross-motion staying any arbitration ret. 9-22-75.
09-19-75	(19)	Filed Respondent's memorandum of law in opposition to Petitioner's motion & in support of his cross-motion.
09-19-75	(20)	Filed affidavit of W.J. Pastore in opposition to petitioner's motion.
09-19-75	(21)	Filed Respondent's amended Answer, Counterclaim & Cross-Petition.
09-23-75	(22)	Filed Memo-Endorsed on Petitioner's motion filed 8-18-75 #15, Re: counterclaims: Motion disposed of in accordance with directions at oral argument. Proceedings stayed pending completion of arbitration. Bonsal,J. 10/11

Cont'd on page #2

JUDGE BONSAL

Page 02

Date of
Judgment

LATE	PROCEEDINGS	(cross)
09-23-75	Filed Memo-endorsed on Respondents #18(motion) filed 9-19-75: Motion denied in accordance with directions at oral argument. Bonsal, J.	
09-24-75	Filed order of stay of proceedings, dated 8-1-22-75	
08-25-75	Filed undertaking on injunction in the sum of \$250,000 by Hartford Fire Insurance Co.	
09-30-75	Filed Respondents Armor Elevator Co. notice of motion to reargue motion to stay the arbitration ret. 10-6-75.	
09-30-75	Filed Respondents Armor Elevator Co. memorandum in support of motion to reargue.	
10-03-75	Filed petitioner's Memorandum in opposition to reargument.	
10-06-75	Filed petitioner's supplemental memorandum in support of motion to dismiss respondents' counter claims.	
10-07-75	Filed notice that the record on appeal has been certified and transmitted to the U.S.C.A.	
10-10-75	Filed Memo-endorsed on motion #24 filed 9-30-75: Armor's motion for reargument is denied. The anti-trust issues remain with the court. So ordered. Bonsal, J. n/n	
10-15-75	Filed Order that petitioner's motion to strike counter-claims & cross-petitions contained in respondents' original answer is denied except that all further proceedings in this court are stayed, until the completion of the arbitration proceedings directed by its order entered 8-6-75. Respondent Armor's application to stay the arbitration directed by this court is denied. Bonsal, J.	
10-20-75	Filed Respondents notice of appeal to the USCA from order entered 8-6-75. Mailed copy to Spitzer & Feldman.	

PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

75 CH. 3074

-----X

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN, :
: :
Petitioner, :
: :
------against- :
: :
-----A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC., :
: :
-----Respondents. :
: :
-----XTO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT
OF NEW YORK

The petitioner, N. V. Maatschappij Voor Industrielle Waarden, by its attorneys, Spitzer & Feldman P.C., as and for its petition herein, respectfully shows that:

1. This petition is made pursuant to §4 of the United States Arbitration Act, and seeks to compel arbitration pursuant to that Act and a preliminary and final injunction restraining respondents, their officers, agents and employees from divulging confidential information imparted to them by petitioner to third party competitors and from disturbing and interfering with the status quo until the completion of the arbitration between the parties.

2. The jurisdiction in this Court is based upon the provisions of the United States Arbitration Act (9 USC §4) and the diverse citizenship of the parties, 28 USC §1332. The matter in contro-

versy exceeds the sum of \$10,000.00 exclusive of interests and costs.

3. Petitioner, N.V. Maatschappij Voor Industriële Waarden was and still is a corporation incorporated under the laws of the Netherlands Antilles, with its principal place of business in Curacao.

4. Respondent, A. O. Smith Corporation, was at all times hereinafter mentioned and still is a corporation incorporated under the laws of the State of New York and has its principal place of business at Milwaukee, Wisconsin.

5. Respondent, Armor Elevator Company, Inc., was at all times hereinafter mentioned and still is a wholly owned subsidiary of A. O. Smith Corporation, incorporated under the laws of the State of Delaware, having its principal place of business in Louisville, Kentucky, and a place of doing business in the City of New York.

6. By written agreement dated October 1, 1973 petitioner granted respondent Armor an exclusive license, for a territory comprising the United States, Puerto Rico, the Virgin Islands and all other United States possessions, territories and protectorates and the Dominion of Canada, to use specified United States and Canadian patents for the manufacture and sale of gearless elevators employing certain defined licensed products and to make, use and practice Know-how consisting of proprietary technical information as to the methods, operating techniques, processes, materials, data,

drawings, engineering information, experience, machinery, equipment and tooling, including information and devices falling within the claims of the patents used in the manufacture of those products.

The agreement provides for the payment by respondent Armor of the sum of 75,000 Australian Dollars upon the initial delivery of drawings and data and the payment of a royalty for each gearless elevator installed involving the use of the licensed products, which royalty is to be credited against minimum royalties in the aggregate amount of 565,000 Australian Dollars payable over a five-year period.

Respondent Armor undertakes in the agreement that the sale and manufacture of gearless elevators employing the licensed products shall be "one of the essential objects" of its business and to that end shall use its sales organization to solicit orders and sell gearless elevators employing the licensed products, to allocate resources, capital, equipment, materials and labor to make such elevators, and at all times to use its best efforts to promote a demand for and to sell the products. A copy of the agreement will be handed to the Court on the return date as Exhibit "A".

7. As a condition for the execution of the agreement, respondent Smith guaranteed, on behalf of its subsidiary Armor Elevator Company, Inc., performance and payment of all obligations and has at all times thereafter controlled and otherwise directed the actions of its subsidiary with respect to the agreement. A

copy of the guarantee executed by respondent Smith is annexed hereto as Exhibit "B".

8. Pursuant to the agreement petitioner made a total disclosure of and furnished respondents Smith and Armor with the confidential technical information, prints, drawings, plans and specifications and data relating to the patents and Know-how, which consisted of shipments of a vast amount of highly technical documents. In addition, representatives of both Smith and Armor were permitted to make several visits to the plants abroad in which gearless elevators employing the licensed products are manufactured, to examine all applicable original drawings, plans, specifications and data, to take motion and still pictures, to visit, ride on and inspect operative installations of such elevators, and they were furnished detailed and meticulous explanations of every facet and phase relating to gearless elevators employing the licensed products.

9. The agreement is a contract providing for commerce among the states and among foreign nations as set forth in 9 USC §§ 1-4 and is governed by the provisions of Title 9 of the United States Code.

10. The agreement contains the following clause relating to arbitration:

Article XI

Section 1. In the event of any breach or threatened breach of this Agreement by either party it is mutually agreed that there is no adequate remedy at law in favor of the other party and that a suit for speci-

fic performance or for injunctive relief would be the only effective remedy for such latter party and nothing contained in Section 2 of this Article XI shall limit or preclude such right of specific performance and injunction, it being agreed that such rights are paramount and that the provisions of Section 2 of this Article XI are subject and subordinate to the provisions of this Section 1.

Section 2. Subject and subordinate to the provisions of Section 1 of this Article XI, any unresolved difference or dispute between the parties concerning the obligation to make payment of any amounts of money provided for in this Agreement or relating to the meaning or application of the provisions of any of the Articles of this Agreement shall be submitted to arbitration before a panel of three (3) arbitrators in the Borough of Manhattan, City, County and State of New York, in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association and the decision of a majority of the arbitrators shall be final and conclusive upon the parties hereto. Each party hereto shall designate one (1) of such arbitrators and the two (2) arbitrators so designated shall select the third arbitrator and upon their failure or inability so to do the third arbitrator shall be selected either by the parties in accordance with the rules of the American Arbitration Association or by such Association. Each party shall pay the cost of the arbitrator appointed by it and the other costs of arbitration shall be shared equally between the parties hereto.

The arbitration may not impose upon either party an obligation not assumed hereunder or deprive either party of any right granted hereunder including any right conferred upon the parties pursuant to Section 1 of this Article XI.

Section 3.

(a) This Agreement shall be construed according to the laws of the State of New York.

(b) A judgment on any decision or award in an arbitration proceeding pursuant to Section 2 of this Article XI may be entered in favor of the

prevailing party in the Supreme Court of the State of New York, County of New York, or the District Court of the United States for the Southern District of New York, or a state court of general jurisdiction or a federal district court or other appropriate court having jurisdiction in the county, district, state or country in which there is located an office of the party against whom such judgment is to be entered or in which it shall have assets.

(c) For the purpose of effectuating the provisions of Section 1 of this Article XI and enforcing the rights of the parties thereunder, each party consents to jurisdiction over its person and consents to appear in the Supreme Court of the State of New York, County of New York, and/or the District Court of the United States for the Southern District of New York, and each party hereby waives any objection to such jurisdiction. Each party agrees to accept service of process sent by the United States mail, Registered, Return Receipt Requested, postpaid, and mailed in the United States Post Office. Any judgment so entered shall, after all rights of appeal have expired, unless the same shall be reversed on appeal, be final and binding and shall be entitled to enforcement by reason of the full, faith and credit clause of the United States Constitution or by comity in the case of MVIW.

11. In direct violation of the agreement respondents never fulfilled or even commenced to perform their obligation to manufacture or sell gearless elevators employing the licensed products. On the contrary, respondents needlessly procrastinated and delayed and then suggested that because of a depressed economy and the consequent limited construction of high rise buildings, the parties should consider the desirability of terminating the agreement, which suggestion was rejected by petitioner.

12. Respondents, then claiming certain deficiencies in the drawings, sent two of their engineers to the manufacturing plants

abroad purportedly for the purpose of necessary on-site inspections and explanations. At the very time that the engineers were so engaged respondents were preparing, and on the same date as the engineers departed, September 20, 1974, respondents sent a letter suggesting that the agreement be cancelled primarily because of design deficiencies and market conditions which would not make the investment economic.

13. During the course of discussions with the engineers they expressed a desire for certain additional technical drawings and data, which were immediately prepared and shipped to respondents. On the last day of their trip and just before leaving, the engineers sent a note that no further documents should be forwarded. A copy of such letter is annexed and marked Exhibit "C". When the material arrived in the United States, respondents chose not to accept or clear it through United States Customs and permitted it to remain in the United States Warehouse for many months.

14. In view of the foregoing and on November 18, 1974, petitioner, through its attorneys, notified respondents that they were in default in respect of their obligations under the License Agreement and petitioner intended to exercise its remedies under the agreement as a result of such default.

15. In response to such letter James N. Johnson, Esq., A.O. Smith's general counsel and Vice President and acting on behalf of both respondents requested that petitioner refrain from initia-

ting any proceedings and that a meeting be set up to explore the possibilities of resolving the matter. Such a meeting was held in the City of New York between the parties acting through their respective attorneys. Mr. Johnson stated that respondents had no intention of proceeding with the manufacture or sale of gearless elevators employing the licensed products inasmuch as the market had passed respondents by and claiming that some of the material that had been furnished by petitioner was not clear and was confusing to respondents' engineers. Petitioner's attorneys inquired why it had taken respondents almost a year and a half to make such assertion when clarification of any material could have been obtained forthwith by telephone, Telex, correspondence, or by personal consultation, to which Mr. Johnson had no reply. When petitioner stated that it was entitled not only to the minimum royalties but also to damages because of respondents' failure to develop and market the licensed products, Mr. Johnson requested the opportunity to consult with the management of Smith and Armor. Shortly thereafter, he telephoned petitioner's counsel and requested that petitioner, without prejudice to its position that respondents were in default, allow respondents to withdraw the material that was then being held in the United States Warehouse so that it could be reviewed and analyzed and that in consequence respondents perhaps would change their mind as to proceeding under the agreement. A letter agreement was then prepared setting out the understanding of the parties, a copy of which is annexed hereto and marked Exhibit "D".

16. During the period stated by respondents' counsel as being necessary for a review of such materials, and immediately following the meeting with petitioner's counsel, respondents surreptitiously and without notice to petitioner commenced discussions with Westinghouse Corporation (Canada) for a sublicense of petitioner's patents and Know-how, which would have been unauthorized under and violative of the exclusive license agreement with petitioner. The claimed excuse therefor was that respondents were attempting to resolve a totally unrelated patent dispute with Westinghouse Corporation (Canada) and assertedly offered such sublicense - which it could not grant - as part of the package. In point of fact it was a ploy to induce and invoke Westinghouse Corporation (Canada) to send a claim of infringement; what respondents succeeded in obtaining was nothing more than a letter from the Westinghouse Corporation (Canada) Patent Department Manager that petitioner's Canadian patent would "probably" infringe a patent of Westinghouse Corporation (Canada) but that the writer of the letter "ha[d] not studied the situation in detail" and that Westinghouse Corporation (Canada) did not desire to deal with petitioner's patents and preferred to resolve its unrelated conflict with Smith and Armor. Respondents first disclosed its dealings with Westinghouse Corporation (Canada) when it forwarded a copy of that letter of purported infringement to petitioner and demanded that the alleged "claim" be defended under the agreement. A copy of the Westinghouse Corporation (Canada) letter, together with the demand by respondents that petitioner either defend the

"claim" or that respondents would "defend" it, are annexed hereto as Exhibits "E" and "F", respectively.

17. Petitioner replied that the discussions with Westinghouse (Canada) constituted a scheme to evoke a purported claim of patent infringement in order to give specious coloration to respondents' position that they could avoid their obligations under the agreement, that the purported claim was no claim at all, that any attempted sublicensing to Westinghouse (Canada) was in violation of the agreement and that the offer of a cross-license belied respondents' claim of inability to manufacture in accordance with the agreement and evidenced an attempt to avoid their responsibilities in any manner attainable. A copy of the letter of petitioner's attorney to respondents is annexed hereto and marked Exhibit "G".

18. Respondents have informed petitioner that they intend to "defend" the purported claim of patent infringement contained in the Westinghouse (Canada) letter (Exhibit "E"), that they intend to meet with and negotiate with Westinghouse (Canada) in their "defense" of said "claim", and have invoked the paragraph of the agreement which would permit respondents to take over such defense and suspend payment of royalties.

19. Respondents were requested to cease its discussions with Westinghouse (Canada) and respondents have rejected that request. A copy of the letter of respondents' attorney notifying petitioner that respondents have undertaken the defense of the purported patent

infringement claim is attached as Exhibit "H"; petitioner's request that respondents have no further contacts with Westinghouse (Canada) is attached as Exhibit "I"; and respondents' reply thereto is attached as Exhibit "J".

20. There are arbitrable disputes of fact arising out of and relating to the agreement including whether respondents failed to fulfill their obligations to manufacture, sell and develop and promote a market for the licensed products and gearless elevators embodying the licensed products or the Know-how conveyed pursuant to the agreement; whether there has been a wrongful refusal to pay the required royalties and the amount of damages to be paid in consequence of respondents' breach; whether respondents have divulged to Westinghouse (Canada) or others confidential Know-how and have attempted to engage in sublicensing discussions in violation of the agreement; and whether respondents have been engaged in a conspiracy to keep the licensed products off the United States and Canadian markets while at the same time precluding licensing by petitioner of others.

21. On June 17, 1975 petitioner served its notice and demand for arbitration on respondents by Registered Mail, Return Receipt Requested, designated its arbitrator, and requested that respondents designate their arbitrator. A copy of the notice and demand is annexed hereto and marked Exhibit "K".

22. On June 23, 1975 Mr. Johnson was notified by telephone of

the prior sending of the notice and demand for arbitration, which he acknowledged had been received. He was asked whether respondents would promptly designate their arbitrator, to which he responded that no decision could be reached until after he had consulted with New York counsel. To the request that the status quo be maintained and that respondents desist from further contacts with Westinghouse (Canada) pending completion of arbitration, he unqualifiedly replied in the negative and stated that he would continue his efforts to deal with Westinghouse (Canada) and to negotiate a sublicense agreement.

23. Respondents have failed and neglected to designate their arbitrator and have failed, neglected and refused to arbitrate all the issues tendered for arbitration including their wrongful acts in negotiating with Westinghouse (Canada) their wrongful inducement and provocation to secure from Westinghouse (Canada) the purported claim of infringement and respondents have stated that they do not intend to maintain the status quo pending arbitration but intend to pursue their negotiations with Westinghouse (Canada), all of which will be to petitioner's irreparable harm and will result in the divulgence of confidential Know-how imparted by petitioner to respondents and the holding out by respondents of the ability to defend so-called patent infringement claims on petitioner's behalf even though respondents are in breach of the agreement.

24. The agreement between the parties recognizes the avail-

ability of injunctive relief to maintain the status quo pending completion of arbitration proceedings in accordance with the principles applicable under the United States Arbitration Act within this District and have so provided in Article 11 of §1 of the agreement.

25. By virtue of the foregoing, respondents should be compelled to arbitrate all issues in dispute with petitioner and should be preliminarily and finally enjoined from interfering with the status quo pending completion of arbitration proceedings.

WHEREFORE, petitioner demands judgment compelling respondents to proceed to arbitration, to designate their arbitrator within the number of days to be determined by this Court and judgment preliminarily and finally enjoining and restraining respondents and each of them directly or indirectly through their officers, agents, or employees from negotiating, discussing, or in any way conveying any information, Know-how, documents, or any writings of whatsoever nature in respect of the products and patents licensed under the agreement dated October 1, 1973 between petitioner and respondents to Westinghouse Corporation (Canada) or any other person, firm, corporation, or entity or from purporting to defend or hold itself out as entitled to defend any claim of patent infringement asserted against petitioner or otherwise interfering with or destroying the status quo pending completion of the arbitration proceeding commenced

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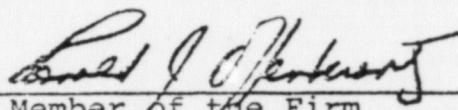
Petition

by petitioner's notice and demand for arbitration dated June 17,
1975.

Dated: New York, New York
June 24, 1975

SPITZER & FELDMAN P.C.

By


A Member of the Firm
Office & P.O. Address
595 Madison Avenue
New York, New York 10022

A 17

EXHIBIT A--"AGREEMENT ANNEXED TO PETITION

A G R E E M E N T

I N D E X

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A G R E E M E N T

THIS AGREEMENT, made this 1st day of October, 1973, by and between ARMOR ELEVATOR COMPANY, INC. (herein "Armor"), a Delaware corporation with offices at Louisville, Kentucky, U.S.A., and N.V. MAATSCHAPPIJ VOOR INDUSTRIELE WAARDEN, a Netherlands Antilles corporation, with offices at Handelskade 8, Curacao, N.A. (herein "MVIW");

WITNESSETH, That, WHEREAS,

(A) MVIW warrants that it is the exclusive licensee for the Territory (as hereinafter defined) of the Letters Patent and Patent Applications (of which MVIW shall notify Armor when patents are issued), as set forth in Schedule "A" hereto ("the Patents"), and is the possessor of proprietary technical information and data pertaining to the manufacture and installation of products and equipment as set forth in Schedule "B" hereto (collectively referred to herein as "the Licensed Products") and which proprietary information is hereinafter contemplated in the definition of "Know-how" set forth below and has the right, power and authority to grant the license to Armor granted herein;

(B) MVIW is the exclusive licensee for the Territory of the Trademarks (as hereinafter defined) and the good-will appertaining thereto and has the right to sublicense the Trademarks in such Territory;

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Exhibit A Annexed to Petition

(C) Armor has a plant suitable for use in the fabrication of Gearless Elevators employing the Licensed Products; and

(D) MVIW and Armor desire to enter into an agreement for the period and upon the terms and conditions herein set forth to:

(1) license Armor to use the patents for the manufacture and sale by it within the Territory of Gearless Elevators employing the Licensed Products;

(2) provide for the disclosure and furnishing by MVIW to Armor of the Know-how as at the date hereof for the production of the Licensed Products; and

(3) license Armor to use the Trademarks in connection with the manufacture, sale and promotion of the Licensed Products within the Territory.

NOW, THEREFORE, in consideration of the mutual promises herein contained and intending to be legally bound hereby, MVIW and Armor hereto covenant and agree as follows:

ARTICLE I. DEFINITIONS

For purposes of this Agreement, the terms set forth below shall mean and be limited to the definitions set forth opposite each term:

(A) "Gearless Elevators" shall mean any elevator driven by a direct current electric motor, the armature, traction sheave and brake drum being mounted on a common shaft, it being intended,

however, to exclude therefrom any geared elevator (i.e. an elevator employing a gear box) and all other types of elevators;

(B) "Know-how" shall mean a description and explanation (and demonstration when possible) which shall be sufficient to impart to Armor an adequate knowledge as at the date hereof of the methods, operating techniques, processes, materials, technical data, drawings, engineering information, experience, machinery, equipment and tooling (including any information or devices falling within the claims of the Patents), designs or specifications used as at the date hereof in the manufacture of Licensed Products;

(C) "Trademarks" shall mean the Trademarks "COMPULOGIC", U.S. Application Serial No. 461,893 and Canadian Application Serial No. 361394, and "THYROGLIDE", U.S. Application Serial No. 461,894 and Canadian Application Serial No. 361395 and any other applications and registrations of "COMPULOGIC" and "THYROGLIDE" in the Territory, together with the good will appertaining thereto.

(D) "Improvement" shall mean any invention, improvement or development which Armor or MVIW shall conceive and reduce to practice, and which shall pertain to the design, construction or method of fabricating Licensed Products;

(E) "Territory" shall mean the United States of America, Puerto Rico and the Virgin Islands and all other United States possessions and territory and protectorates in proximity thereto and the Dominion of Canada, collectively;

(F) "Person" shall mean any legal entity, including (without limitation) any firm, corporation or individual;

(G) "Sales Affiliate" with respect to Armor, shall mean any Person carrying on business in the Territory to which Armor shall sell the Licensed Products or Gearless Elevators employing the Licensed Products for the purpose of resale, provided, however, that except with MVIW's prior written specified approval nothing contained in this Agreement shall be construed to permit Armor to sell or lease the Licensed Products or Gearless Elevators employing the Licensed Products to or through any Sales Affiliate except a Sales Affiliate located in and carrying on its business in the Territory for installation in a building located therein and which Sales Affiliate shall, prior to its advertising, selling or installing any such Gearless Elevators employing the Licensed Products, execute and deliver to MVIW an instrument in writing agreeing to be bound by the terms of this paragraph.

(H) "Subsidiary" shall mean a corporation, a majority of whose issued and outstanding shares are owned by Armor, provided, however, that no sale or lease of the Licensed Product or Gearless Elevators employing the Licensed Products may be made by Armor to or through any such Subsidiary except if such Subsidiary is located within and carrying on its business in the Territory and such Gearless Elevators employing the

Licensed Products shall be installed in a building located within the Territory and such Subsidiary shall, prior to its advertising, selling or installing any such Gearless Elevators employing the Licensed Products, execute and deliver to MVIW an instrument in writing agreeing to be bound by the terms of this paragraph;

(I) "Aust. Dollar" shall mean the unit of Australian currency known as the Dollar.

(J) The effective date of this Agreement shall be October 1, 1973.

(K) "Geared Elevators" shall mean an elevator driven by a driving unit consisting among other apparatus of reduction gears mounted in a gear box and through which a driving motor is connected.

ARTICLE II. GRANT OF RIGHTS

MVIW shall and hereby does grant to Armor an exclusive license to make, use, and practice the Know-how in the Territory, and to Armor and Armor's Sales Affiliates or Subsidiaries, as defined in this Agreement, an exclusive license to use, lease, sell and otherwise dispose of the Licensed Products or Gearless Elevators employing the Licensed Products or embodying the Know-how in the Territory, subject, however, to the following limitations and restrictions:

(a) Such license is applicable solely to Gearless Elevators; but notwithstanding this subsection or any other provision of this Agreement Armor shall have the exclusive option during the term of this Agreement by a ten day prior written notice to MVIW and subject to the terms and limitations hereof to use the Licensed Products and applicable Know-how including modifications thereto (as provided in Subsection (d) of this Article) to manufacture, sell and lease geared elevators at an earned royalty rate per elevator car to be negotiated between Armor and MVIW, but not to exceed the earned royalty rate per elevator car for Gearless Elevators and absent agreement on earned royalties to be paid such option shall lapse, and in the event such option shall be executed the earned royalties paid thereon shall not be credited toward or apply on account of the minimum royalties required to be paid by Article VI; provided, however, that in no event may such option be exercised or used to manufacture, sell and lease geared elevators during the period Armor may have a non-exclusive license referred to in Article VI, Section 1 (c) and the last sentence of Section 1, Article XV.

(b) Except as and to the extent herein specifically provided in respect to a Subsidiary or a Sales Affiliate

of Armor and in Article XIV hereof, such license may not be assigned or transferred by Armor or by operation of law or otherwise and confers no right to grant sublicenses;

(c) No Licensed Products may be manufactured by Armor or sold or leased by it to any customer or through a subsidiary or Sales Affiliate except for installation in a building located within the Territory, and the license herein granted may not be used directly or indirectly except in respect of the Licensed Products for installation in the Territory;

(d) The rights granted by this Agreement include modifications of the Licensed Products but do not nor will they apply to any replacements of any Licensed Products developed in the future whether or not such replacement products may be used for the same purposes as the Licensed Products covered by this Agreement.

(e) Armor shall not export or allow or suffer to be exported outside the Territory, directly or indirectly or through any Sales Affiliate or Subsidiary, any Licensed Products or Gearless Elevators employing the Licensed Products or manufactured directly or indirectly by Armor.

ARTICLE III. TECHNICAL INFORMATION TO BE FURNISHED

Section 1. From time to time after the execution hereof, MVIW shall make or cause to be made available to Armor the

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following:

- (a) A disclosure of the Know-how as of the effective date hereof adequate for production of the Licensed Products.
- (b) Two (2) copies of drawings, specifications and other written material falling within the Know-how and used as at the effective date hereof for the design, manufacture, installation and servicing of the Licensed Products shall be supplied at no cost to Armor, and additional copies requested by Armor will be supplied at actual cost to be paid by Armor; and
- (c) Upon reasonable advance written request by Armor the consulting and advisory services of technicians experienced in the Know-how shall be made available to Armor at its plant in Louisville, Kentucky, or at such other place or places within the Continental United States and Canada as Armor shall designate, to the extent that the furnishing thereof will not unduly interfere with or impede the operations of the employer of such personnel.

Section 2. Within thirty (30) days after Armor shall be invoiced therefor, it shall reimburse MVIW for the time spent and the travelling and living expenses incurred by each technician in the furnishing of services pursuant to Section 1 of this Article III by paying an amount in Aust. Dollars with respect

to subdivisions (a) and (c) of this Section 2 and either U.S. Dollars or Canadian Dollars, as the case may be, with respect to subdivision (b) of this Section 2, equal to the sum of:

(a) the salary or wages of each such technician for each calendar day spent by such technician in the furnishing of such services and while en route to and from the location of his employment (or such other location to which his employer shall direct that such technician return) and the Armor plant or other location referred to in Section 1 of this Article III, plus in each instance the overhead applicable to such salary or wages which for purposes of this Agreement shall be deemed to be one hundred (100%) per cent thereof to cover such overhead expenses, statutory award and industrial award benefits, workers' compensation and other benefits or obligations payable to such technicians;

(b) the actual travel and living expenses incurred by such technician in the Territory in conformity with his employer's then prevailing travel policy; and

(c) reimbursement for materials, equipment and supplies requested or approved by Armor which shall be calculated on the basis of cost, including factory overhead, plus twenty-five (25%) per cent.

Section 3. On ten (10) days' prior written notice from Armor, MVIW shall procure the consent of Elevators Pty. Limited (hereinafter E.P.L.) a limited liability corporation organized under the laws of the State of New South Wales, Australia, with an office and plant at 877 South Dowling Street, Waterloo, N.S.W., Australia to allow duly authorized and technically qualified employees of Armor at the expense of Armor to visit those areas of the E.P.L. plant engaged in the design, manufacture and sale of the Licensed Products provided that any such visits shall be at times mutually convenient to Armor and E.P.L.

Section 4. From time to time upon not less than ten (10) days' prior written notice to Armor and at the expense of MVIW, the latter may send representatives to or maintain representatives at the plant and operations of Armor where Licensed Products or Gearless Elevators employing the Licensed Products are fabricated for the purpose of inspecting the use to which Armor shall be applying the Know-how, and the representatives of MVIW may inspect the facilities of Armor, its Sales Affiliates and Subsidiaries at which the Licensed Products or Gearless Elevators employing the Licensed Products are assembled or sold, as well as the installation thereof.

Section 5. All personnel or representatives exchanged according to any provision of this Article III shall be subject

to and obey all governmental security and other laws and regulations, if any, of the respective states or countries in which such plants are located, and all regulations pertaining to safety, taking of pictures and such other special regulations as may be deemed necessary by the party operating the plant visited by personnel or representatives of the other party, to avoid interference with the normal operations and administration of the plants. Either party shall have the right to request the return of, or refuse access to the plants to any employee or representatives of the other party who shall be or become unsatisfactory. Neither party shall be under any responsibility or liability for the death of or any injury or accident which may occur to any of such employees or representatives or their property during any such visit or otherwise; and each party shall and hereby does indemnify the other and save it harmless from and against any and all loss, cost, damage, liability, claim or demands on account of personal injuries (including death) to such employees or representatives or damage to the property of such employees or representatives arising out of or in any manner connected with such visits or the training of such employees or representatives.

Section 6. Except as otherwise provided in this Section 6, Armor shall keep in the strictest secrecy and confidence all technical information which it shall receive pursuant to this

Agreement and shall exercise all necessary precautions to safeguard the secrecy of the Patents and Know-how to prevent unauthorized disclosure thereof or of any part or parts thereof. Subject thereto, Armor may (a) disclose the Know-how to manufacturers of machinery, equipment, tools or parts ordered by Armor for the fabrication of Gearless Elevators employing the Licensed Products but only to the extent necessary for the manufacture thereof; (b) disclose to customers or prospective customers of the Licensed Products or Gearless Elevators employing the Licensed Products fabricated by Armor such information as to the manufacture, use and maintenance thereof as may be necessary to encourage sales and permit the proper use thereof; and (c) disclose to duly authorized representatives of Federal, State or local inspection authorities such information as may be legally required to permit inspection in accordance with applicable laws, statutes, ordinances, contract specifications or regulations.

During the term of this Agreement and thereafter, MVIW shall not disclose, except to E.P.L., to which it may make such disclosure provided that E.P.L. shall agree not to disclose to others any technical processes or Know-how of Armor to which MVIW shall be privy either through plant visits or by reason of any other provision of this Agreement; and MVIW and E.P.L. shall keep in the strictest secrecy and confidence all such technical processes or Know-how which shall be disclosed by Armor and shall take all

necessary precautions to prevent unauthorized disclosure thereof or of any part or parts thereof.

Section 7. Armor and MVIW, respectively, shall, and MVIW shall cause E.P.L. to, require, in conformity with their respective customary practices that each of their employees to whom Know-how or technical information shall be disclosed in the course of his employment, either at the time he shall commence employment or promptly upon the execution of this Agreement, shall agree not to disclose to any other Person any of the Know-how acquired by him pursuant to the provisions of this Agreement, or use any thereof in any manner contrary to the best interests of the other party as far as such Know-how was unknown to them before it was obtained pursuant to the provisions of this Agreement.

Section 8. Armor acknowledges that any copyright in the drawings and all written, printed and photographed matter supplied to Armor pursuant to this Agreement shall belong to and remain vested in MVIW and on the termination of this Agreement all such documents shall be returned by Armor to MVIW.

Section 9. Nothing contained in this Agreement shall impose any obligation on either party or cause MVIW to require E.P.L. to disclose information relating to the finances, general overheads or business creations or arrangements.

Section 10. MVIW at its expense shall modify any production drawings as specified by Armor applicable to this Agreement that may be required to meet U.S. and Canadian codes and requirements

'of statutory authorities regulating the elevator industry, particularly C.S.A. and U.L., and Armor undertakes to make their best endeavors to facilitate MVIW making the modifications.

Section 11. Armor and MVIW acknowledge that plant visits by their respective employees or representatives will result in such employees or representatives being exposed to factory methods or practices of the other and that MVIW shall have the right to disclose such factory methods or practices of Armor to E.P.L. which will result in E.P.L.'s employees being exposed to the factory methods or practices of Armor. Armor agrees that MVIW and E.P.L. may, without any payment hereunder or otherwise, employ the factory methods or practices of Armor (where such practices are not incorporated in Patents issued to Armor) outside the Territory and MVIW shall obtain the consent of E.P.L. to permit Armor to employ, without any payment to MVIW or E.P.L., the factory methods or practices of E.P.L. (where such practices are not incorporated in Patents issued to E.P.L.) inside the Territory. Notwithstanding anything contained in this Article III to the contrary, unless MVIW shall have obtained said consent of E.P.L., it shall not disclose such factory methods or practices of Armor to E.P.L.

ARTICLE IV. TRADEMARKS

Section 1. MVIW hereby grants Armor an exclusive license during the term of this Agreement to use Trademarks within the Territory as applied to Gearless Elevators employing the Licensed

Products, but all usage of such Trademarks during any and all periods in which Armor may use the Trademarks pursuant to any provision of this Agreement shall conform to the reasonable requirements and specifications of MVIW and the owner of the Trademarks so as to preserve the individuality, exclusiveness, and good will appertaining thereto and Armor shall permit MVIW and the owner of the Trademarks or their appointed representatives at mutually agreeable times to inspect the manufacture and installation of the Licensed Products so that MVIW may judge whether Armor is meeting the standards established by MVIW, and promptly send MVIW all sales materials and advertising and publicity material in which Trademarks are used or referred to and discontinue further use of any such material on reasonable written demand by MVIW or the owner of the Trademarks.

Section 2. Armor agrees during the term of this Agreement and thereafter that it and all Subsidiaries and Sales Affiliates shall:

- (a) refrain from either directly or indirectly questioning or attacking the validity of Trademarks;
- (b) be vigilant in ascertaining any real or apparent infringement of the Trademarks and promptly inform MVIW thereof;
- (c) not manufacture, advertise or sell any Gearless Elevators employing the Licensed Products under a trademark other than one of the Trademarks and shall not directly or

indirectly use in any manner whatsoever any of the Trademarks within the Territory except in connection with the Licensed Products and in Canada state that its use of Trademarks is as Registered User thereof; and

(d) upon the termination of this Agreement, discontinue the use of the Trademarks, subject to Article XV, Section 1 hereof and shall cooperate to cancel Registered User Registrations, if any.

Section 3. Upon request by MVIW, Armor shall execute such documents as may be necessary to record Armor as an authorized user of the Trademarks in Canada, and MVIW at its expense shall initiate action forthwith to register the Trademarks in countries of the Territory where required and shall prepare and file a Registered User Agreement in Canada.

ARTICLE V. SALES

Section 1. The sale and manufacture of Gearless Elevators employing the Licensed Products shall be one of the essential objects of Armor's business and to that end Armor shall:

(a) use its existing sales organization to solicit orders and sell such Gearless Elevators employing the Licensed Products in the Territory, and issue and collect invoices therefor in the name of Armor, all upon such terms and conditions and such prices as Armor shall determine from time to time; and

(b) allocate resources, capital, equipment, materials and labors to make such Gearless Elevators employing the Licensed Products readily available.

Section 2. MVIW shall forward to Armor and shall cause E.P.L. to forward to Armor any inquiry received with respect to Gearless Elevators employing the Licensed Products pertaining to the Territory.

Section 3. Armor, at all times during the term of this Agreement, shall use its best efforts to promote a demand for and to sell Gearless Elevators employing the Licensed Products, by among other things, promotion and advertisements (copies of which shall be furnished to MVIW from time to time but not less often than in each calendar year); provided, however, that Armor may continue to manufacture and supply elevators of its own design which may have a similar use as, or be used in combination with those employing the Licensed Products.

ARTICLE VI. FEES

Section 1. For and in consideration of the Patent and Trademark license herein granted and the use of the Know-how, Armor shall pay MVIW the following:

(a) \$75,000 Aust. Dollars upon the delivery to Armor of the drawings and data referred to in Article III, Section 1, subdivision (b) hereof; 1

(b) An earned royalty per car for each Gearless Elevator installed during the term of this Agreement

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involving the use of the Licensed Products, whether in whole or in part, and whether installed by Armor or by any person, firm or corporation leasing, purchasing or otherwise obtaining, directly or indirectly, the Licensed Products from Armor, payable at the rate of \$1,000 Aust. Dollars per car. The earned royalties on Gearless Elevators shall be credited against the minimum royalties provided to be paid by subdivision (d) of this Section and the earned royalties shall be adjusted as of the fifth anniversary date (i.e. commencement of the sixth year) of the effective date of this Agreement and annually each anniversary date thereafter, (such adjustments to be effective for the next ensuing twelve [12] months) after any such anniversary date by a percentage equal to the percentage variation as at each such date in the "All Items" Index of the "Consumers Price Index - All Items and Major Groups, U.S. and 10 Cities", issued by the Bureau of Labor Statistics of the Department of Labor as of October 1, 1973; should the publication of such Index be discontinued or should the computation of it be reconstituted then there shall be substituted therefor such index as may be published by the United States Government most nearly equivalent thereto, and the indices or other statistics shall be

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recomputed most closely to reflect the change that would have been shown had said All Items Index been available;

(c) If this Agreement shall not have sooner terminated, on the commencement of the eighth year of the effective date of this Agreement the earned royalties payable under this Agreement shall be renegotiated. In the event the parties fail to agree on such earned royalties within thirty (30) days of such anniversary date, Armor may request a non-exclusive license from MVIW and MVIW shall grant such license to Armor, subject otherwise to the terms of this Agreement and at the earned royalty rate payable at the end of the seventh year from the effective date of this Agreement which rate is subject to modification pursuant to Article XV, Section 1 (e).

(d) A minimum royalty for each year for a period of five (5) consecutive years (by a year is meant a period of [12] consecutive months, each measured from the effective date of this Agreement or the succeeding anniversaries thereof) in Aust. Dollars, as follows:

1st year	\$ 25,000
2nd year	120,000
3rd year	130,000
4th year	140,000
5th year	150,000.

(i) Royalties shall accrue upon date of Armor "bookings" (execution of contracts); but payments of earned royalties shall be based on date of invoice to customers by Armor and shall be made quarterly at the end of each calendar quarter ("earned royalties").

(ii) Notwithstanding anything herein provided to the contrary, each calendar quarter payment on account of earned royalties shall be not less than one-quarter of the minimum royalty payments set forth above for each year involved.

(iii) Minimum royalties paid in any twelve (12) month period from the effective date of this Agreement or the anniversary thereof in excess of royalties earned for such twelve (12) month period pursuant to subdivision (b) of this Section 1 will be carried forward as a credit against future earned royalties payable in respect to sales contracts executed in the first five (5) year term of this Agreement, and no such credit may be availed of by Armor otherwise.

Section 2. At the time of each such calendar quarterly payment by Armor pursuant to Section 1 of this Article VI, Armor shall make a written report to MVIW, certified by an Officer of Armor setting forth the computation of the amount of such payment in such detail as MVIW may reasonably require. In any event,

Armor shall keep true, accurate and full books and records of the sale and invoicing of all Gearless Elevators using Licensed Products, in whole or in part, whether the same shall be made by Armor, a Sales Affiliate or Subsidiary, which books and records shall be subject to inspection and audit by MVIW or its designated representatives at all reasonable times, at the expense of MVIW unless such audit shall disclose royalties payable in any period which exceed by more than ten (10%) per cent the royalties as shown in Armor's computation, in which case Armor shall pay the expenses and costs incurred by MVIW to obtain such audit. The said books and records shall be kept at Armor's principal place of business for a period of not less than five (5) years following the end of the calendar year to which they pertain.

Section 3. All references in this Agreement to its "term" and "termination" are intended to mean the stated or accelerated date on which this Agreement shall come to an end, subject, however, to the following:

(a) From and after such date all rights of Armor, its Sales Affiliates and Subsidiaries hereunder shall cease and end except that it may complete the fulfillment of orders received and accepted in writing within thirty (30) days after such date for Licensed Products or Gearless Elevators employing Licensed Products and may continue to manufacture and sell replacement parts without the payment to MVIW of any royalties on such replacement parts.

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(b) Armor's obligation to keep records, render reports, pay royalties and fees and all other subsisting obligations hereunder to MVIW shall be enforceable by MVIW hereunder and for such purposes this Agreement shall be deemed not to have ceased, expired or ended.

(c) It is intended that this Section 3 shall be subject and subordinate to any provisions of this Agreement inconsistent herewith.

ARTICLE VII. RATE OF EXCHANGE

Section 1. The continuing royalties payable to MVIW pursuant to Article VI shall be paid in Aust. Dollars and shall be paid to such Persons and at such places as MVIW may designate in writing from time to time.

Section 2. Any tax imposed by the Government of the United States or the Dominion of Canada or any state or political subdivision of either thereof upon any fee paid to MVIW hereunder, shall be deducted from the amount of such fee, but no such deduction shall be made by Armor and no action shall be taken by it which would prejudice the right of MVIW to contest the propriety of any such deduction; all other taxes, assessments or other obligations in the Territory shall be borne by Armor.

ARTICLE VIII. PATENTS

Section 1. Except as otherwise provided in Article XVII, Section 4, MVIW makes no representation or warranty, either express or implied, including without limitation as to the validity,

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exclusivity or enforceability of any of the Patents, Trademarks or Know-how, but MVIW shall not knowingly convey to Armor any technical information infringing any Patents of other persons in force in the Territory. In the event any claim (under a Patent or other protective right) by others shall arise which, if sustained, would prevent Armor from manufacturing or selling the Licensed Products, or if Armor shall be charged with infringement of any Patent by reason of the manufacture or sale of the Licensed Products, Armor shall promptly give MVIW written notice thereof and MVIW at its option may take over and assume (at MVIW's cost) the defense of Armor against any such claim or litigation. In the event MVIW shall elect not to take over the defense, MVIW shall so notify Armor in writing within thirty (30) days of the notice by Armor to MVIW of such charge of infringement, then Armor shall have the option to take over such defense, and in either event the rights and liabilities of the parties against and to each other shall be as follows:

(a) Armor may at the time it elects not to take over such defense or, irrespective of whether it elects to take over such defense, at any time thereafter and before the resolution of such claim or litigation without any liability on the part of Armor, cancel and terminate this Agreement, in which event it shall forthwith cease and terminate any further use of the Know-how and Patent and Trademark rights, return to MVIW all drawings, specifications and other data

theretofore received by it from or through MVIW, and pay MVIW all adjusted earned royalties and minimum royalties pursuant to Article VI, Section 1 hereof.

(b) Upon receipt of such notice or the institution of such suit claiming infringement by Armor, it shall have the option during the period of ninety (90) days thereafter, to be exercised upon giving thirty (30) days prior notice to MVIW, to suspend the use of the rights and licenses granted under this Agreement and the manufacture and sale of Licensed Products and no royalties, minimum or otherwise, shall commence to be earned hereunder during such period of suspension; should such claim or litigation be terminated without any liability on the part of Armor or be resolved against such asserted infringement, and should Armor not have previously cancelled and terminated this Agreement pursuant to subdivision (a) of this Article VIII, Section 1, the period of suspension shall end and the rights and licenses granted Armor under this Agreement shall become effective and the royalties, minimum and otherwise, shall again commence to be earned hereunder, and the term of this Agreement and the rights and responsibilities of the parties shall be deemed automatically extended for a period equal to the period of suspension.

(c) Should MVIW elect not to defend such infringement claim or litigation, it shall have no liability to Armor or

otherwise for any loss, cost, damage or judgment, provided, however, that should Armor elect to take over such defense or settle such claim or litigation, then the sole extent of and the maximum and only responsibility of MVIW shall be to refund to Armor (1) those minimum royalty payments previously made by Armor to MVIW pursuant to subdivision (d) of Article VI, Section 1, to the extent that such minimum royalties were not earned pursuant to subdivision (b) thereof and (2) earned royalties paid on a job as to which an operating permit for those elevators utilizing Licensed Products in a building has not been issued to the building owner by the appropriate Governmental Authority for the carrying of tenants, provided, however, that such refund shall be limited to an amount required to reimburse Armor for the costs and expenses paid by Armor in defending such infringement claim or litigation or in such settlement, and in no event shall MVIW be obligated to refund all or any part of the Seventy-Five Thousand (\$75,000) Aust. Dollars paid by Armor pursuant to subdivision (a) thereof or the first year minimum royalty payment of Twenty-Five Thousand (\$25,000) Aust. Dollars as provided for in subdivision (d) thereof.

(d) Subject only to the exception provided for in subdivision (c) of this Article VIII, Section 1, Armor shall pay MVIW all royalties adjusted and earned pursuant to

subdivisions (b) and (d) of Article VI, Section 1 on Licensed Products or installation of Licensed Products or Gearless Elevators using Licensed Products invoiced prior to the date on which such infringement claim was asserted or litigation instituted, and each calendar quarterly payment due and unpaid on such date.

(e) From and after the date of assertion of such claim or institution of litigation, no earned royalties or minimum royalties shall be payable by Armor to MVIW until the termination of such claim or litigation; in the event that such claim or litigation shall be resolved without any liability on the part of Armor all earned royalties and minimum royalties that were unpaid during the pendency of such claim or litigation shall promptly be paid by Armor to MVIW; if the resolution of such claim or litigation shall result in any liability on the part of Armor it shall be offset against such unpaid earned royalties and unpaid minimum royalties, and Armor shall pay to MVIW only the excess of such earned royalties and minimum royalties over such obligation. In no event shall MVIW have any liability to Armor beyond or in excess of such unpaid earned royalties and unpaid minimum royalties save that in the event the minimum royalties in excess of the first \$25,000 Australian which have been paid exceed the earned royalties due at the date on which the claim was asserted or the litigation

instituted against Armor, then such excess shall be refundable to Armor to the extent that the liability of Armor exceeds the aforementioned unpaid earned royalties and unpaid minimum royalties, but otherwise no earned or minimum royalty payments made by Armor to MVIW shall be refunded; if Armor, as a result of any such claim or litigation shall be required or shall find it reasonably necessary to enter into a license agreement with any other person and be required to pay royalties thereunder, then such royalties shall be offset against the earned royalties and minimum royalties thereafter payable by Armor to MVIW under this Agreement and Armor shall pay only the difference to MVIW; in such latter event or in the event that MVIW is unable to design around the alleged infringement within ninety (90) calendar days Armor shall have the option to cancel this Agreement forthwith, and should it exercise the option to cancel then (i) it shall be released from the obligation to make payment to MVIW of earned royalties and minimum royalties otherwise due and payable subsequent to the date of such cancellation, but it shall make payment to MVIW of all earned royalties which were due and payable prior to the date of such cancellation, and (ii) it shall forthwith cease and terminate any further use of the Know-how and Patent and Trademark Rights and return to MVIW all drawings, specifications and other data theretofore received by it from or through MVIW or through MVIW or E.P.L.

Section 2. In the event of the assertion of any claim or the institution of any suit, more fully referred to in Section 1 of this Article VIII, and should MVIW elect to defend against the same, Armor shall cooperate with MVIW and lend it all reasonable assistance at Armor's expense in the defense of such claim or suit, and subject thereto MVIW shall bear the expenses of such suit.

Section 3. MVIW shall pay any renewal fees necessary for the maintenance of the Patent and Trademark Rights within the Territory, the use of which is licensed to Armor hereunder. If and to the extent that MVIW shall not desire to continue to maintain such Patent and/or Trademark Rights, then MVIW, if Armor is not in default hereunder, shall so inform Armor, and Armor shall have the right to preserve the maintenance of such Patent and/or Trademark Rights, in which event MVIW shall assign to Armor all of the right, title and interest of MVIW in such Patent and/or Trademark Rights within the Territory and Armor shall grant to MVIW a royalty-free, non-exclusive license to continue to use such Patent and/or Trademark Rights for purposes not violative of the exclusive rights granted herein to Armor, which exclusive rights, i.e. the purposes of such royalty-free license shall survive this Agreement and be co-extensive with the term of the Patent and/or Trademark Rights assigned to Armor by MVIW.

Section 4. Armor shall promptly inform MVIW of any infringement of the MVIW Patents, Copyrights and Trademarks herein licensed to Armor, of which Armor shall become aware and shall, at its own cost and expense, cooperate with and lend reasonable assistance to MVIW in prosecuting any such infringement; if and to the extent that MVIW shall fail, neglect or determine not to prosecute such infringement, then MVIW not later than six (6) months after receiving particulars of any purported infringement from Armor, shall permit Armor (if Armor is not in default hereunder), at its option and expense, to prosecute such infringement on behalf of MVIW, and MVIW at its own cost and expense shall provide drawings and written material bearing on the conception and commercial success of the Licensed Products and written technical descriptions of the Licensed Products if requested by Armor to assist Armor in prosecuting such infringement. In the latter event Armor shall indemnify MVIW against costs and expenses thereafter deriving from such infringement proceeding, and Armor shall be entitled to receive and retain all cash proceeds or equivalents emanating from such proceeding.

Section 5. Armor and MVIW promptly shall disclose to the other all improvements of Licensed Products or the fabrication thereof, whether or not patentable; shall give the other party access to all patent applications thereon and advise the other party of the filing of all such applications; and at the written

request of the other party, shall provide the other party with the power to inspect and make copies of all such filings and applications.

Section 6. Upon the disclosure of any improvement by Armor to MVIW or by MVIW to Armor as set forth in Section 5 of this Article, Armor or MVIW (as the case may be) shall grant and hereby grants to the other a royalty-free, non-exclusive license to make, use, and sell such improvement during the term of this Agreement; provided, however, that any such improvement by Armor shall be deemed part of the Licensed Products and nothing contained herein shall prejudice, reduce or adversely affect MVIW's rights in full to earned royalties as set forth in Section 1 (b) of Article VI in respect of Licensed Products.

Section 7. Armor shall comply with all requirements of the patent, trademark and copyright laws of the Territory necessary or appropriate to ensure that the Patent, Trademark and Copyright Rights of MVIW are fully protected.

ARTICLE IX. FORCE MAJEURE

No failure or omission by either of the parties hereto in the performance of any obligation contained in this Agreement shall be deemed a breach hereof if the same shall arise from any causes beyond the control and without the fault or negligence of such party, including, but not restricted to, acts of any governmental authority or any officer, department, agency or instrumentality thereof, fire, storm, flood, earthquake,

explosion, accident, acts of the public enemy, war, rebellion, insurrection, riot, sabotage, epidemic, quarantine, restrictions, strike, lock-out, dispute with workmen, labor shortages, transportation embargoes or failure or delays in transportation, or exhaustion or unavailability or delays in delivery of any transportation facility, product or material necessary to the performance hereof; provided, however, that either party shall continue performance with the utmost dispatch whenever any such causes are removed. Any party claiming any such cause for any failure or omission hereunder shall give prompt notice thereof to the other party.

ARTICLE X. AMENDMENTS AND WAIVER

Section 1. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writings, and this Agreement may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed by a duly authorized officer or representative of each of the parties hereto.

Section 2. The failure of any party hereto to enforce at any time any provision of this Agreement or to exercise any option herein granted shall not in any way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement or any part thereof, or limit, prevent, or impair the right of any party to subsequently enforce such provision, nor

shall the failure of any party to exercise any option herein granted affect or impair the right of such party to receive or exercise any subsequent option herein granted.

Section 3. All remedies afforded in this Agreement shall be taken and construed as cumulative; that is, in addition to every other remedy provided herein.

ARTICLE XI. LEGAL REMEDIES - ARBITRATION

Section 1. In the event of any breach or threatened breach of this Agreement by either party it is mutually agreed that there is no adequate remedy at law in favor of the other party and that a suit for specific performance or for injunctive relief would be the only effective remedy for such latter party and nothing contained in Section 2 of this Article XI shall limit or preclude such right of specific performance and injunction, it being agreed that such rights are paramount and that the provisions of Section 2 of this Article XI are subject and subordinate to the provisions of this Section 1.

Section 2. Subject and subordinate to the provisions of Section 1 of this Article XI, any unresolved difference or dispute between the parties concerning the obligation to make payment of any amounts of money provided for in this Agreement or relating to the meaning or application of the provisions of any of the Articles of this Agreement shall be submitted to arbitration before a panel of three (3) arbitrators in the Borough of Manhattan, City, County and State of New York, in accordance

with the Commercial Arbitration Rules then obtaining of the American Arbitration Association and the decision of a majority of the arbitrators shall be final and conclusive upon the parties hereto. Each party hereto shall designate one (1) of such arbitrators and the two (2) arbitrators so designated shall select the third arbitrator and upon their failure or inability so to do the third arbitrator shall be selected either by the parties in accordance with the rules of the American Arbitration Association or by such Association. Each party shall pay the cost of the arbitrator appointed by it and the other costs of arbitration shall be shared equally between the parties hereto.

The arbitration may not impose upon either party an obligation not assumed hereunder or deprive either party of any right granted hereunder including any right conferred upon the parties pursuant to Section 1 of this Article XI.

Section 3.

(a) This Agreement shall be construed according to the laws of the State of New York.

(b) A judgment on any decision or award in an arbitration proceeding pursuant to Section 2 of this Article XI may be entered in favor of the prevailing party in the Supreme Court of the State of New York, County of New York, or the District Court of the United States for the Southern District of New York, or a state court of general jurisdiction or a

federal district court or other appropriate court having jurisdiction in the county, district, state or country in which there is located an office of the party against whom such judgment is to be entered or in which it shall have assets.

(c) For the purpose of effectuating the provisions of Section 1 of this Article XI and enforcing the rights of the parties thereunder, each party consents to jurisdiction over its person and consents to appear in the Supreme Court of the State of New York, County of New York, and/or the District Court of the United States for the Southern District of New York, and each party hereby waives any objection to such jurisdiction. Each party agrees to accept service of process sent by the United States mail, Registered, Return Receipt Requested, postpaid, and mailed in the United States Post Office. Any judgment so entered shall, after all rights of appeal have expired, unless the same shall be reversed on appeal, be final and binding and shall be entitled to enforcement by reason of the full, faith and credit clause of the United States Constitution or by comity in the case of MVIW.

ARTICLE XII. NOTICES

All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been properly given if sent by Registered Air Mail to the party entitled

to receive such notice, addressed in accordance with the last written instructions received from such party concerning the mailing address to be used for such notices, and not subsequently withdrawn from the mails.

ARTICLE XIII. ASSIGNMENT

Neither Armor nor MVIW may assign this Agreement or any of their rights or obligations hereunder except as and to the extent otherwise expressly provided for herein, without the prior written consent of the other party.

ARTICLE XIV. SUCCESSORS IN INTEREST

This Agreement shall be binding upon and inure to the benefit of any Person with which any party hereto shall merge or consolidate, or to which either of them shall transfer all or substantially all of their respective business and assets.

ARTICLE XV. DURATION AND TERMINATION

Section 1. This Agreement shall become effective on the effective date hereof and continue in force and effect for a period of five (5) years from such date, unless sooner terminated as hereinafter provided, and shall not terminate at the expiration of such five (5) year period unless a one (1) year notice in writing shall have been given by either party to the other prior to the end of the fourth year. In the absence of such written termination notification at the end of the fourth year to terminate this Agreement at the end of the fifth year, this Agreement shall automatically renew from year to year unless

subsequently terminated by one (1) year's notice in writing given by either party prior to the end of any such renewal period. If MVIW shall exercise such right to terminate without default by Armor, MVIW agrees to give Armor a non-exclusive license covering the use of Know-how, Patents and Trademarks (subject otherwise to the terms of this Agreement) only at an earned royalty of:

- (a) if the bookings of elevator cars received for the previous twelve (12) month period was in excess of one hundred (100) cars, two (2%) percent of Armor's total factory cost including all overhead of Licensed Products or Gearless Elevators using Licensed Products manufactured by Armor, which royalties shall be payable on a calendar quarterly basis within thirty (30) days from the end of each calendar quarter.
- (b) if the bookings of elevator cars received for the previous twelve (12) month period were less than one hundred (100) cars, royalty payments as specified in Article VI Section 1 (b) hereof adjusted as provided therein, which royalties shall be payable on a calendar quarterly basis within thirty (30) days from the end of each calendar quarter.
- (c) The earned royalties required to be paid under paragraph (a) of this Section shall be paid in Aust. Dollars on the basis of the current bank selling rate applicable thereto as established by the Continental Illinois National

Bank of Chicago on the date on which such payments are payable thereunder.

(d) MVIW shall not be obligated to provide any further rights, technology or services to Armor.

(e) In the event that this Agreement shall not have been previously terminated pursuant to its provisions and that Armor shall have obtained a non-exclusive license from MVIW as in this Agreement provided and during such period of non-exclusive license should MVIW grant to any other Person a non-exclusive license in the Territory under applicable Patents, Trademarks, Know-how, Licensed Products and Gearless Elevators which shall permit such person to manufacture and sell for any use within the scope of the non-exclusive license granted to Armor and at an earned royalty which is lower than the royalty charged to Armor under this Agreement, then MVIW shall promptly notify Armor of such License and extend to Armor the lower royalty rate of the noticed license, effective as of the date on which such rate became effective with respect to the noticed license.

Section 2. Any of the following events shall constitute an event of default by Armor:

(a) the failure to make punctual payment within ten (10) days subsequent to the sending of a written notice of any amount required to be paid by it pursuant to any

provision of this Agreement subject to the provisions of Article IX;

(b) the failure for a period of thirty (30) days from the sending of written notice to observe or perform any of the promises, agreements or undertakings herein contained on its part to be observed and performed subject to the provisions of Article IX;

(c) if Armor shall make a general assignment for the benefit of creditors, file a petition in bankruptcy, or be adjudicated a bankrupt or insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future bankruptcy or other statute, or shall file an answer admitting or not contesting the material allegation of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Armor or any material part of its properties;

(d) if within thirty (30) days after the commencement of any proceeding against Armor seeking any such reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief, such proceeding shall not have been dismissed, or if, within thirty (30) days after the appointment, without the consent or acquiescence of Armor, of any such trustee, receiver or liquidator, such appointment

shall not have been vacated; or

(e) if the effective control of Armor comes or is likely to come into the possession of a competitor of Armor.

Section 3. Upon the occurrence of any such event of default MVIW shall have the right to terminate this Agreement and upon the sending of written notice by it to Armor of such termination:

(a) Armor shall forthwith cease to have any rights in the Patent and Trademark Rights and Know-how and shall forthwith return all documents and drawings relating thereto which shall have been supplied or caused to be supplied by MVIW;

(b) MVIW shall be entitled to recover from Armor all royalties and minimum royalties due, payable or accrued to the date of such termination;

(c) MVIW shall be entitled to recover from Armor an amount equal to the minimum royalties for the unexpired portion of the first five (5) years of this Agreement; and

(d) interest on the amounts provided for in subdivisions (b) and (c) of this Section 3 at the rate of ten (10%) per cent per annum from the date of default to the date of payment, provided, however, that if the maximum rate of interest legally permitted to be recovered shall be less than the rate of ten (10%) per cent per annum then it is intended that the rate shall be such less maximum rate as may be lawful;

provided, however, that irrespective of such termination the obligations assumed by Armor and MVIW, respectively, under Section 6 of Article III hereof shall continue.

ARTICLE XVI. GOVERNMENTAL CONSENT

In the event that this Agreement shall require the consent of any official body in any country, each party shall use its best efforts to obtain the approval of such body and to notify the other thereof promptly. If such approval shall not be obtained, then this Agreement shall be at an end and no party shall have any claim on the other party hereto.

ARTICLE XVII. GENERAL

Section 1. It is agreed that neither Armor nor MVIW are agents of the other for any purpose whatsoever and shall not have authority to represent or make any commitments or incur any obligations in the name or on behalf of the other or E.P.L. This Agreement does not constitute a joint venture or partnership between the parties and in no event shall MVIW or Armor be liable for any obligation of the other.

Section 2. Armor hereby agrees to protect, indemnify and save harmless MVIW from and against all liabilities, obligations, claims, damages, penalties, causes of action, costs and expenses (including without limitation attorneys' fees and expenses) arising out of the manufacture, sale or use of any Licensed Products or from any accident, injury to or death or loss of or damage to property occurring as the result of the manufacture.

sale, installation or use of any Licensed Products, or any negligence or tortious act on the part of Armor or any of its employees, agents, contractors, or licensees, connected with the manufacture, sale, installation, use or repair of the Licensed Products. In case any action, suit or proceeding is brought against MVIW by reason of any such occurrence, Armor, upon request, will at Armor's expense resist and defend such action, suit, proceeding or cause the same to be resisted and defended by counsel designated by Armor and reasonably approved by MVIW. The obligations of Armor under this Section 2 shall be among those obligations of Armor surviving the termination of this Agreement.

Section 3. MVIW shall be responsible for any customs duty which may be required to be paid with respect to the drawings referred to in Article III, Section 1 (b) to be delivered to Armor.

Section 4. MVIW warrants that the Licensed Products manufactured and applied in accordance with the Know-how transferred to Armor by MVIW upon execution of this Agreement will fulfill the performance criteria and requirements of the specified operational features listed in Schedule D in addition to the system description listed as Schedule C of this Agreement, provided, however, that this Waranty (1) is in lieu of all other warranties, express or implied; (2) shall not apply to equipment used in conjunction with Licensed Products and not covered by Schedule B,

nor shall it apply to breaches of warranty caused by incompatibility of Non-licensed Products used in conjunction with Licensed Products; and (3) in no event shall MVIW be liable in damages to Armor arising out of any breach of this Warranty. In the event that Armor shall have notified MVIW of a claimed breach of such Warranty, MVIW shall have ninety (90) days to remedy such breach. If MVIW is unable to remedy such breach, and the Warranty is breached in a substantial respect, then Armor's sole remedy shall be to terminate this Agreement without further liability or damage of any kind of either party to the other, other than the performance of those obligations specified in Article VIII. This Warranty shall be unenforceable by any person, firm or corporation other than Armor and by it only as and to the extent provided in this Section 4.

Section 5. No failure by MVIW to insist upon the strict performance of any term hereof or to exercise any right, power or remedy consequent upon a breach thereof, and no acceptance of full or partial payment of the royalties and license fees during the continuance of any such breach, shall constitute a waiver of such breach or of any such term, and no acceptance of partial payment of any royalties or license fees shall be deemed to constitute payment thereof or an accord and satisfaction.

Section 6. Armor agrees that it will take all such steps and perform all such acts as may be required to comply with all laws, statutes, ordinances and governmental regulations required for the

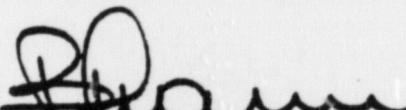
conduct of its business and the manufacture and sale of Licensed Products within the Territory.

Section 7. Should any provision of this Agreement be determined to be invalid or unenforceable it shall not affect any or all of the other terms and provisions of this Agreement, which shall continue in force and effect.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers and representatives, all as of the day and year first above written at Toronto, Canada.

ARMOR ELEVATOR COMPANY, INC.

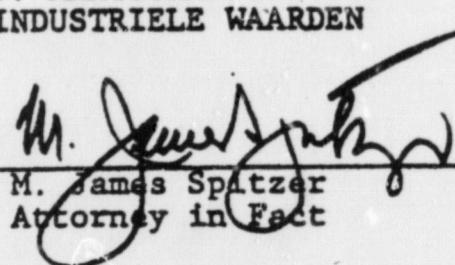
By


Robert S. Mann President

B.S.MANN V.P.

N.V. MAATSCHAPPIJ VOOR
INDUSTRIELE WAARDEN

By


M. James Spitzer
Attorney in Fact

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Exhibit A Annexed to Petition

SCHEDULE "A"PARTICULARS OF LETTERS PATENT AND/OR PATENT APPLICATIONS

<u>Application No.</u>	<u>Application Date</u>	<u>Patent No.</u>	<u>Date of Issue</u>	<u>Country</u>	<u>Subject</u>
536,786	4.6.68	3,387,239		U.S.A.	Electro-Mechanical Relays
955,652	23.3.66	800,097		Canada	ditto
675,499	16.10.67	3,536,164		U.S.A.	Compulogic Guardian Car System
002,599	16.10.67	879,957		Canada	ditto
271,083	12.7.72			U.S.A.	Improved Pattern Generator for the Control of Motion of a Body Moving Over a Predetermined Path
146,766	10.7.72			Canada	ditto
				U.S.A.	Improved Transducer
				Canada	ditto

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SCHEDULE "B"

The Licensed Products shall mean the following which Armor may manufacture through employing the EPL know-how:

- (i) Variable Voltage Thyristor controlled solid state regulator equipment known as Thyroglide and employed with Gearless elevators. The equipment includes control panels for motors, motor generator sets, safety circuits, and door control.
- (ii) Automatic group supervisory control systems equipment known as Compulogic. The equipment includes control panels for interconnection of a group of elevators, supervision, position control including inductor control, position control by velocity computer and shaft encoder, and floor level control.

COMPULOGIC - SYSTEM DESCRIPTION.

THE BACKGROUNDDemand Systems

1. The Compulogic group control system for lifts is a "demand" system - that is to say the decision as to what task should be allocated to any particular lift is taken automatically in the controller by a built-in system of logic on the basis of an instantaneous analysis of the demands on the system.
2. The superiority of decision-making systems of this type over the earlier "program" systems is now well established, but it should not be assumed from this that all demand systems are much alike or that all operate with more or less equal efficiency. The performance of one system may diverge widely from that of another. The difference lies in the quality of the decisions that the system makes.

The Compulogic Achievement

3. The great achievement of the compulogic controller is that it can now take significantly better decisions than even the best of the previous generation of demand systems. A combination of computer technology with an incisive analysis of lift traffic in modern buildings has permitted the design of a logic system which, without exceeding practical economic limits, has been able to take into account all the factors that are important (including some which were formerly too difficult) and interpret them with greater subtlety, intelligence, and speed. The result is a marked advance in system efficiency without increase in cost, together with the considerable advantages of small size and high reliability.

The decision-Making Problem

4. The essence of the problem is to decrease the daily average waiting time by increasing the utilisation of the lifts. Utilisation may be increased by:-
 - (a) Reducing the distance travelled by an empty lift when going to answer a call for service.
 - (b) Taking every opportunity to scoop up additional traffic en-route with lifts that are already engaged in fulfilling an assignment.

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- (c) Preventing the assignment of more than one car to any call.
- (d) Concentrating service on areas that are generating the most traffic.
- (e) Making the best use of those moments when there is a temporary absence of calls on the system to station the lifts in the best positions to deal quickly with any renewal of demand.

5. Measures such as these, will, by themselves, reduce the average waiting time considerably but possibly at the risk of leaving isolated calls unanswered for long periods. It is essential therefore that any practical system should also incorporate logic which is able to assess not merely the presence, volume, and concentration of demand, but also its time precedence.

6. Compulogic successfully combines all these features so as to give an unusually high percentage of calls answered within a short waiting period and at the same time a low figure for the largest single waiting period.

7. Lift utilisation may also be increased by eliminating any time unnecessarily spent stationary at landings after all passengers have left or entered the lift. This may be achieved by observing the passenger traffic out of and into the lift and closing the doors promptly as soon as it has ceased instead of allowing an arbitrary fixed time for loading or unloading. This feature also is incorporated in Compulogic.

PRINCIPLES OF COMPULOGIC

8. Method of Treatment

The logic in this system is too complex to be described meaningfully in terms of a detailed and pedantically correct account of exactly what happens in any and every combination of circumstances. Instead a description will be given of the principles that are incorporated in the logic and the general order of precedence in which the various demands for service are met. The system is described under the following headings:

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Sections and Groups
Section Store
System Store
Section Guardian
Central Logic
Load Weighing
Secondary Assignment
Peak Demand
Door Closing
Control System Options
Other features.

9. Sections and Groups

For decision-making purposes the possible demands on the system are treated in Sections and Demand Groups as shown in the diagram below, which represents a typical building. The system has 4 Sections which divide the building into zones generating roughly equal amounts of traffic. Within each Section the floor demands are collected in Groups, as shown, each generating traffic of roughly the same volume or importance. Each section is normally divided into 3 groups, the bottom section being increased to 5 groups if there are basements in the building. The system thus allows for 14 groups in all.

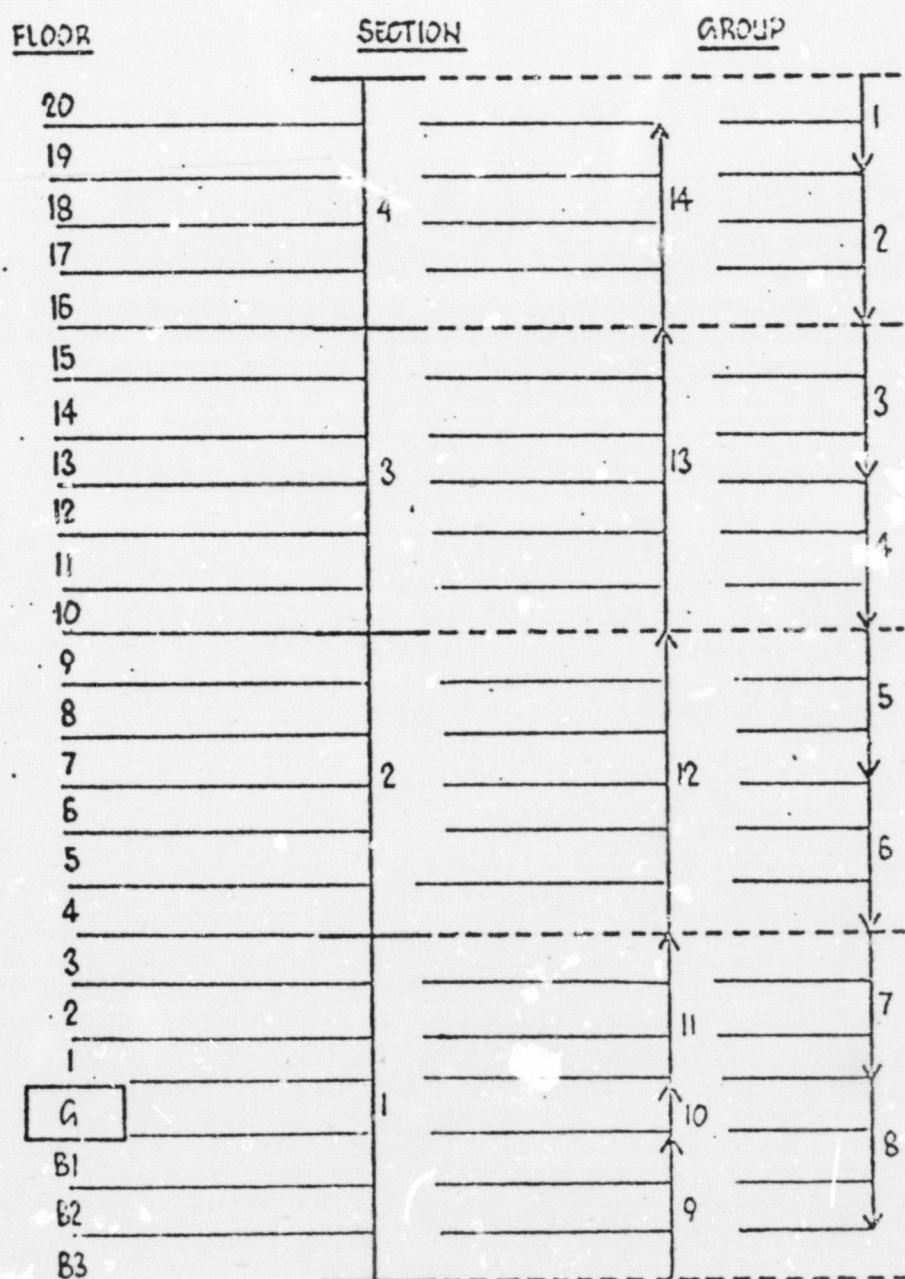
10. When a car responds to a Group demand it goes first to the lowest call in an UP Group or to the highest call in a DOWN Group.
11. The selection of an appropriate arrangement of Sections and Groups is made individually for each application from a consideration of the nature of the building and probably tenancy pattern. It may easily be altered retrospectively in the light of actual observed traffic patterns or changing tenancy. The arrangement shown in the diagram would be typical for straight forward application.

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12. Section Store

When a landing demand occurs it is registered in a Section Store (of which there is one for each Section) as a demand from the Group in which it occurs. Each Section Store stores demands from Groups in its Section in the order in which they occur, and feeds out these Group demands, one at a time, in that order, as lifts are made available to deal with them. Thus the longest waiting call will normally be the first to receive attention within that Section when a car is made available to that Section. Provision is made, however, for priority to be given to certain demands. This takes the form of queue-jumping by entering the store immediately behind the demand at the output of the store rather than at the back of the store. For example, within Section 1 demands from Group 10 (Main Lobby UP) will always be given priority treatment.

13. System Store

In addition to the Section Stores there is also a System Store. Any Section store which has an unfulfilled Group demand in its output will also register this as a Section demand in the System Store. Section demands are stored in the System Store in the order in which they occur and are fed out, one at a time, in that order, as lifts are made available to deal with them.

14. Section Guardian

A car becomes available for service as soon as it has completed an assignment - that is, when it has closed its doors and has no further car calls to answer. As soon as it becomes available it will normally be assigned the task of Section Guardian for the Section in which it now stands, unless a check of Status shows that another car is already guarding this Section, in which case it then becomes available for assignment to other tasks.

15. A Section Guardian will normally deal first with any Group demand registered in its Section Store. If there is no such demand waiting the Section Guardian is available for assignment, if required, to a task in another Section in accordance with the Central logic, but will normally be left as long as possible guarding its Section so as to deal immediately with any new demand originating in that section.

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16. A car which becomes available in a Section which is already guarded may be assigned either:-

- (a) to answer a call in an unguarded Section (i.e. a Section demand at the output of the System Store)
- or (b) if no such call exists, to take post in another Section as Section Guardian
- or (c) if all Sections are already guarded, to be available to take guardian duty when required.

17. The effect of this Section Guardian principle is to keep the cars evenly distributed through the building so as to minimise the journey required to answer a call. The commitment of a Section Guardian to Group demands originating within its own Section may however be overridden by Central logic under certain circumstances.

18. Central Logic

The Central Logic is responsible for dealing effectively with demands on the system which have not been expeditiously dealt with by Section Guardians, either due to the temporary absence of a guardian in the Section concerned or to the presence of a peak demand. The central logic assigns available cars to these duties in a manner that causes minimum disturbance to established Section Guardians.

19. A Section Guardian may, if required by the central logic, be taken for duty elsewhere by three circumstances:-

- (a) a demand from an unguarded Section
- (b) a peak demand in another section
- (c) a demand from an unguarded Section that has remained at the output of the System Store for more than a given time (e.g. 30 seconds). This demand will override a demand in its own section.

20. The time override is included in the system to guard against certain unusual traffic patterns which could theoretically occur but which are quite improbable. The actual time delay used can be varied if required.

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21. Load Weighing

For certain logic decisions it is necessary for the system to know how many passengers there are in the car. Each car is therefore fitted with a load-weighing device which detects four stages of load in the car. The four stages and their uses are as follows:-

- (a) Nil. Used to clear any outstanding car calls placed unintentionally or out of mischief.
- (b) 60%. Used, with other criteria, to establish the presence of a peak demand.
- (c) 90%. Used to establish that the car is already full and thus unable to accept any further assignments ahead of it.
- (d) 110%. Used to establish that the car is overloaded and thus may not be permitted to close its doors and leave the landing.

22. Secondary Assignment

An important new feature made possible by Compulogic is the Secondary Assignment logic. In this the logical future position of the car, which advances ahead of the car as far as the slowing distance from contract speed, searches for other unallocated landing demands in the same direction. Each one that it finds it takes as a secondary assignment (provided it is not already full) clearing the demand from any Group, Section, or System demand in which it may be registered.

23. This differs from earlier systems in that the secondary assignment is selected in advance and does not depend on the chance arrival of a lift at the floor in question. Because it is positively assigned to one car and withdrawn from the system it cannot be assigned also to other cars. This avoids the duplication and bunching frequently encountered in earlier systems.

24. Peak Demand

If a peak demand is detected in any Group it takes priority over all other assignments and the first available car is assigned to that Group demand. The criterion for establishing a Peak is that a car assigned to the Group has loaded to 60% while another unsatisfied demand still remains in the Group. For a single floor Group (e.g. Main Lobby) the criterion is simply that a car at the floor has loaded to 60%. If the additional car fails to satisfy the demand then a Peak will be re-established and the cycle repeated.

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25. If peak conditions obtain in more than one Group then those Groups are dealt with in a special sequence which tends to give preferential treatment to UP peaks at the Main Lobby and DOWN peaks in the higher parts of the building. This system deals more effectively than earlier systems with heavy traffic in both directions such as is frequently encountered in busy buildings at lunchtime.

26. Door Closing

A great deal of the time taken by a car for the completion of an assignment is spent standing stationary at landings waiting for passengers to walk into or out of the lift. If an arbitrary time be allowed for each process then it must suffer the disadvantage either of being too long (and therefore wasteful) when the passengers are few or of being too short when the passengers are many. Too short a time will harass passengers unnecessarily and unacceptably with premature door closure, especially in systems which do not detect passage across the threshold. Quite possibly both of these disadvantages could be suffered in the same system.

27. The Compulogic controller overcomes this problem by continuing the already well established use of the "Curtain of Light" safety device as a detector of passenger traffic across the car threshold, but with some modification of the timing.

28. When a car arrives at a landing at which there is a landing call its doors will be held open for a preset time (usually 8 seconds) before starting to close. However, if the light ray is broken door closing will start 4 seconds after the beam is restored, unless there is a car call placed, in which case the doors will start to close between 1 and $\frac{1}{2}$ seconds (according to setting) after the call is placed or after the beam is restored, whichever is the later.

29. When a car arrives at a landing in response to a car call only, no allowance need be made for passengers to enter the car, and then the doors will start to close either after a preset time of 4 seconds or $\frac{1}{2}$ second after the beam is restored after having been broken.

30. The system also includes logic to deal effectively with prolonged interruption of the beam or obstruction of the door.

31. Control System Options

The standard Compulogic controller includes provision for Security Service, Fire Service, Independent Service, and Attendant Control.

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32. The controller also includes as standard a full motor-room supervisory panel with indication of the state of all major logic decisions occurring within the computer as well as the conditions of all car and landing demands, car position and movement.
33. For routine interrogation of the computer, provision is included for the service technician to apply a series of test routines to confirm correct functioning of the system's logic. Provision is also included so that a recorder unit may be plugged-in for automatic recording of full traffic data for subsequent computer analysis.
34. Other Features

When a car has received no assignments for a preset time (typically 6 minutes) it automatically shuts down with its doors closed. The Section Guardian principle ensures that shut down cars are distributed evenly throughout the building. Alternatively, the cars may be directed to shut down at nominated floors. The occurrence of a fresh demand will cause the appropriate lift to start up and answer the call.
35. Should some fault cause a car to fail to start when required it is automatically removed from the system and an appropriate failure signal is given at the supervisory panel.
36. The Compulogic system incorporates a number of design features and precautions to ensure that in the event of a major electrical failure the system will continue with a degraded service rather than cease altogether. The most significant of these are listed below:
37. (a) Two separately fused supplies are provided for landing button circuits, one for UP buttons and one for DOWN buttons. If one fuse blows, the "directional collector" function is modified to give service from the remaining set of landing buttons.
- (b) If both landing button circuit fuses are blown all cars are automatically programmed to make landing calls throughout the building in accordance with a preset pattern of dummy car calls.
- (c) If a car call supply fuse blows then that car is withdrawn from the group control logic.

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- (d) The group control logic is such that it includes an unusual amount of logic redundancy. Large sections of the logic could fail without preventing the allocation of a car to a waiting call, though not necessarily in the most efficient manner.
- (e) Any failure of the logic to allocate cars to waiting calls is automatically detected and causes the cars to follow a fixed pattern of calls as in (b) above.

THYROGLIDE III - SYSTEM DESCRIPTION

1. In Thyroglide III the main development is in the pattern generation. The essential features of the servo loop and thyristor control are unchanged, and the floor-level transducer is retained as the prime levelling device and as an essential safety back-up to the main digital system.
2. In earlier Thyroglide systems the pattern generator produces a signal that is a time dependent function. At higher speeds the tolerances obtainable with this technique are still adequate for control of the acceleration pattern and steady speed running, but are insufficient to prevent the accumulation of unacceptable errors in the distance actually travelled by the lift in comparison with the precise distance of the intended journey.
3. The required accuracy demands a distance dependent function for the slowing pattern rather than a time dependent function. This is obtained in Thyroglide III from a digital encoder which counts down every quarter inch of travel towards the intended destination. The encoder signal is fed to a Velocity Computer which continuously measures the distance between the position of the car and its intended destination and further derives from this a control signal which corresponds exactly with the required ideal speed of the lift at that instant in its journey. This digitally derived slowing pattern is thus able to control the lift precisely in accordance with the intended speed pattern and distance.
4. During its journey the lift therefore is controlled in turn by three different systems. It accelerates from rest up to contract speed under the control of an acceleration pattern that is a voltage/time function produced by the pattern generator. When the slowing pattern voltage produced by the digital encoder and velocity computer falls below the voltage from the pattern generator (either before or after it has attained contract speed) it takes control of the lift and brings it into the destination floor. Within 10 inches of the floor, control is taken over by the floor level transducer which brings the lift to an accurate

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stop within $\frac{1}{2}$ inch of floor level and maintains correct floor level as the passenger load in the lift changes.

5. Among the advantages of this system is the elimination of the need for slowing plates in the shaft which are required in considerable numbers in some conventional systems, or for complex electro-mechanical analogues of the shaft-way which are a feature of others.
6. A further advantage of Thyroglide III in comparison with other systems is that it does not have to accept the compromise of a standard speed pattern for non-standard floor heights. This can be quite significant when, as is commonly found, the floor height at the main lobby is substantially greater than the standard inter-floor height. For example, with a 19-foot floor height at the main landing, the Thyroglide III system will, on a single floor run, permit the acceleration of the car to a speed of 450 f.p.m. before slowing commences, whereas other systems will usually restrict the maximum speed on a single floor run to 300 f.p.m. or less.
7. The precision obtained by the use of digital techniques permits Thyroglide III to control the lift in accordance with the theoretically ideal speed pattern. The floor-to-floor times obtained with this system are therefore outstanding. They will not be surpassed and are at present even approached only by earlier versions of Thyroglide itself.
8. The stability of digital techniques and solid-state devices will ensure that Thyroglide III will, in service, continue to deliver its outstanding performance without the degradation and loss of tune which so commonly beset conventional control systems.
9. The flexibility of digital techniques and the incredible speed of operation of integrated circuits provide a system which for practical purposes has no speed limitations, high or low. Thyroglide III is without question, for gearless lifts of any speed, the finest speed control system ever produced.

4425

SCHEDULE DPERFORMANCE CRITERIAI: Compulocic Operational Specifications

- A. Group control to 8 cars and 30 landings.
- B. Normal operation from 0 to +70°C ambient in the controller.
- C. Normal operation in the presence of a +15% -10% line voltage change over specified temperature range at the controller.
- D. Equipment operation from following available power supplies - 200V (20%), 230V, 460V, 575V, 3 Phase/60 Hz.
- E. Electronic integrity and secure operation in the presence of electronic/electrical and electromechanical/mechanical noise inherent in such an environment.

II. Speed and Acceleration Control

- A. Acceleration Rates - As specified, between 3.5 and 4.5 ft./sec.² (adjustable between 3 and 7 subject to other system limitations).
- B. Average Acceleration Change Rate - Between 4 and 15 ft./sec.³.
- C. High Speed Regulation - $\pm 1\%$ of contract speed.
- D. Response Time - Start motion 500 milliseconds from start signal and completion of door circuits.
- E. Electric Stop - Car to be brought to full dynamic stop before brake is applied.
- F. Stopping Accuracy - Maintain car level within $\pm 1/4"$.

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III. Regulation and Protective Circuit**A. Car will not start if:**

1. Hoist motor field is less than 50% rated or the phase failure/phase reversal relay detects:

- a. Low voltage on all 3 phases
- b. Low voltage on one phase
- c. Improper phase sequence

- B. The maximum car speed will be reduced to approximately 85% of full speed if an overspeed condition (more than 5% over full speed) is detected, but the car will otherwise continue to function normally.

C. Car will make emergency stop if:

1. Governor or other safety devices trip.
2. Emergency terminal slowdown operates.

- D. Current limit is only by means of a magnetic overload relay of the inverse time oil dashpot type. If this operates the car does an emergency stop and shuts down.

- E. Selector Correction - Minor discrepancies are corrected at each stop thus eliminating cumulative errors. In the event of failure of the selector system while running the car shall follow a speed time slowdown, stop at the end of the shaft and shutdown.

- F. Electrical Noise Immunity - Electronic controls shall be so arranged that no electrical noise or transients, nor the failure or short of any three or less electronic devices, shall enable the car to start or to continue running with the doors open, except in the leveling zone.

Nor shall the same fault conditions enable the car to drive away from floor with doors open, by more than 2 inches before initiating an emergency stop.

Exhibit A Annexed to Petition

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IV. Field ConditionsA. Power Supplies

Standard supplies available are 200V (208), 230V, 460V, and 575V - 3 Phase, 60 Hertz. Normally no neutral bus is brought to machine room.

B. Ambient Temperature

Equipment must operate in 0-70°C ambient in the controller.

C. Temporary Operation

Provisions for temporary operation during construction at inspection speed with minimum wiring.

V. Duties

A. Speed Range. - 400-1800 FPM.

B. Motor Fields - Up to 30 amps at 250 VDC.

C. Generator Fields - Up to 10 amps at 250 VDC.

D. Brake Coils - Up to 6 amps at 250 VDC.

OPERATIONAL FEATURESI. Next Up Selection

A non-rotational next up selection will be provided for cars arriving at the lobby floor. The lobby car which is selected next up will illuminate its next up sign, and park with its doors open to receive incoming passengers. When the M.G. set shuts down, the doors of the next up car shall close, and when fully closed, the next up sign will be extinguished. Subsequent registration of the up hall button will cause the doors of the next up car only to open (in the event that there is more than one car at the lobby), start the M.G. set, and illuminate the next up sign.

In selecting a next up car, preference shall be given to a car which has its M.G. set running. When the next up car shuts down its M.G. set, the next up selection will be transferred to another lobby car (either parked or arriving), provided its M.G. set is running.

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II. Directional Preference

When a car opens its doors in response to an "up" or "down" hall call, the proper hall lantern will be illuminated and the car will maintain preference for this direction of travel to allow the entering passenger time to register his car call. Directional preference will be maintained until the car doors are almost fully closed.

If an up and then a down hall call are both registered at an intermediate floor where a car is standing (with no car calls registered and no hall calls in the system), the car doors will open, the up hall call will be canceled, the up lantern will illuminate, and the car will maintain preference for travel in the up direction. If no car call is registered for travel above the position of the car, the doors will close and the up lantern will be extinguished. The doors will then reopen, the down hall call will be canceled, the down hall lantern will be illuminated, and preference for travel in the down direction will be maintained until the car doors are almost fully closed.

III. Dispatch Protection

The system will automatically provide emergency dispatching in the event of failure of the primary dispatching means.

IV. Delayed Car Protection

The system will automatically disassociate a car from group service in the event that the car is delayed a predetermined time. The landing demands assigned to this car will be reassigned to another "in service" car in the group. Priority may be given to the reassigned calls, if desired, by arranging for these demands to enter the store at an advanced stage.

The car will automatically be restored to group service when the delay is corrected.

V. Load Weighing Dispatch

An elevator will be dispatched from the main terminal if loaded to a predetermined percentage of capacity.

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Exhibit A Annexed to Petition

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VI. Load Weighing Bypass

An elevator will bypass landing demands if it becomes loaded to a predetermined percentage of capacity. The landing demands assigned to this car will be reassigned to another in-service car in the group. Priority may be given to the reassigned calls, if desired, by arranging for these demands to enter the store at an advanced stage.

Load weigh dispatch and bypass will be independently adjustable.

VII. Lobby Door Time

In addition to the door closing times mentioned in paragraphs 26 thru 29, Schedule C, a timer will be furnished for the car selected next up at the lobby to allow time to load the car. This initial time will not be reduced by interruption of the photobeam, or registration of a car call; however, on subsequent reopening of the door due to interruption of the photobeam this closing time will be reduced to approximately 1/2 sec. from the time the doors reach the fully open position, provided the photobeam has been re-established.

This lobby door time will be terminated if the car becomes loaded to a predetermined capacity to allow advance dispatching of the car.

Additional cars arriving at the lobby which are not selected as the next up car will close their doors in the normal manner as described in paragraphs 26 thru 29, Schedule C.

Should the doors be prevented from closing for a predetermined time, the delayed car protection timer mentioned previously will cause a buzzer on the car to sound to discourage passengers from further delaying service.

VIII. Door Protective Timer

The elevator doors will be caused to reopen after a predetermined time delay if the doors fail to close fully, or if the car fails to run when given a start signal after the doors close (probably due to a dirty door interlock contact). The doors will continue to recycle, in an attempt to clear the door track, until the door interlock contacts make up or until the door protective timer is cut off by the delayed car protection timer mentioned previously.

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IX. Off Peak Operation

When neither an up or a down peak exists, the system will provide section guardian operation as set forth in the Compulogic system description.

The number of floors comprising a section may be changed at any time to suit building occupancy. This change can be readily accomplished on the job site at terminals provided for this purpose.

Priority service may be given to selected floors at any time to suit building occupancy by entering the section store at an advanced stage.

During off peak operation, a priority demand will be registered at the lobby floor, if there is no next up car at the lobby floor.

X. Up Peak Operation

During an up peak condition, heavy traffic will originate from the lobby and the operation will be as follows:

- A. A priority demand will continually be registered at the lobby for all cars.
- B. If only one car is next up at the lobby, the allocation of down demands to cars will be prohibited.
- C. All cars will reverse at their highest call and return to the lobby.
- D. The section guardian arrangement will be discontinued.
- E. The system reverts to off peak operation when a car departs with less than 60% load, thus indicating that the up peak has subsided.

XI. Down Peak Operation

When a peak demand in a group is initiated all demands in the system store are ignored until a second car is allocated to that group, or a following car is allocated to the group as a second assignment.

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A peak is established by a car loading to or past 60% with further landing calls to answer in that group, the peak is cancelled when a second car is allocated or a following car is allocated as a second assignment.

The peak demand is immediately reinstated if the above loading conditions are re-established.

A car leaving the lobby floor with a car call registered will operate the second assignment feature so that a degree of service is furnished to up calls during a down peak.

In this manner the down demands registered the longest will be the first assigned when a car is made available to that section.

Elevators which become loaded will bypass landing demands, therefore, demands assigned to the loaded car must be reassigned to another in service car, as previously described. On down peak operation, down demands which are reassigned are given priority status in the section register.

XII. Car Top Inspection Station

An inspection station will be provided on top of each elevator and will contain the following:

- A. A transfer toggle switch to transfer from "run" to "inspection".
- B. Constant pressure up-down pushbuttons arranged to operate the elevator at slow speed for inspection and maintenance purposes. These buttons will be operative only when the toggle transfer switch is in the "inspection" position.
- C. A safety button as an additional safeguard, so that actuation of the up or down button will not move the car unless constant pressure is simultaneously maintained on the safety button (optional).
- D. A toggle type safety stop switch with red handle for stopping the car and making the car inoperative at any point in its travel.
- E. On inspection operation the car speed cannot exceed 150 FPM (max.), the normal starting circuit, the leveling, and door operation must be cut off.

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Exhibit A Annexed to Petition

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XIII. Pit Stop Switch

A surface mounted fixture will be provided in a suitable location in the pit of each elevator. The fixture will contain a toggle type emergency stop switch with red handle for stopping the car and making the car inoperative at any point in its travel.

XIV. Hall Pushbuttons

Single hall pushbuttons will be provided at terminal floors and up-down pushbuttons at intermediate floors.

When a button is pressed, it acknowledges call registration by illuminating and remains illuminated until the call is answered. (2 Common and 1 switch wires are required per button).

XV. Car Operating Panel

The car operating device will consist of a panel flush mounted in the car enclosure, and will contain buttons numbered to correspond to floors served for registering car stops, an emergency stop switch, an emergency call bell button, a door open button, light switch, and blower switch. In addition, it will contain all other actuating devices for features described hereinafter.

The registration of a car call will cause the button to illuminate to acknowledge call registration. As the car slows down in response to a car call, the call will be cancelled and the illumination will be extinguished in the corresponding car button.

XVI. Car Position Indicator

A position indicator will be provided over the door in the elevator.

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XVII. Duplicate Car Operating Panel

To facilitate passenger access to car floor buttons, a duplicate car operating panel will be provided in addition to the main car operating panel described in the preceding paragraphs. The duplicate car operating panel will contain as a minimum, illuminated car call buttons and door open button. Passengers entering the car may press the desired floor button in either car station and the buttons for that floor will illuminate in both car stations. The door open button in either station will perform its function in like manner.

XVIII. Hall Lanterns

Hall lanterns with single stroke gongs will be provided over all hoistway entrances except at the lobby floor.

Single lanterns will be furnished at terminal floors and up-down lanterns at intermediate floors.

Advance lighting of the hall lanterns will be provided when slowdown is initiated, so that intending passengers can move toward the proper car prior to its arrival at the floor. Advance lighting of the next up sign in the lobby will also be provided.

XIX. Independent Service

A key protected switch will be provided for each car for selecting "independent service" operation. When this switch is turned to the "on" position, the car will be transferred automatically to operation with an attendant.

The car will park with its door open. The attendant will register the car calls corresponding to the desired floor stops, and the closing of the doors will be subject to the start button in the car operating panel. During this type of operation the car will automatically bypass registered hall calls. Such calls will not be cancelled, but will remain registered and will be answered by one of the remaining cars in the group.

When the switch is returned to the "off" position, the car will be restored to normal operation in the manner previously described.

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XX. Operation Without Attendant

The momentary pressing of car buttons by passengers will (subject to the dispatch system and door control devices described elsewhere) send the car to the designated landings in the order in which the landings are reached, regardless of the sequence in which the buttons are pressed. During this operation, the car will also answer calls registered from the hall buttons. Each call will be cancelled when answered.

When traveling in up direction, the car will stop at floors for which car buttons or up hall buttons have been pressed, but will not stop at floors where down hall buttons only have been pressed. Likewise, the car when traveling in the down direction will stop at floors for which car buttons or down hall buttons have been pressed, but will not stop at floors where up hall buttons only have been pressed.

Should both up and down hall calls be registered at an intermediate floor, only the call corresponding to the direction in which the car is traveling will be cancelled upon the stopping of the car at that landing.

Actuation of the emergency stop switch in the car will stop the car regardless of its position in the hoistway, cause the car to become inoperative and cause the sounding of an emergency bell. However, the sounding of the bell will be omitted if the car is being operated by an attendant.

Actuation of the emergency call bell button in the car will cause the alarm bell to sound.

XXI. Door Operation - Without Attendant

Upon the stopping of the car at a landing for which a call has been registered, the car and hoistway doors will open automatically. At all floors except the lower dispatching terminal, the doors will close upon the expiration of a predetermined period of time and the car will proceed to its next stop.

At the lower dispatching terminal, the car will park with its doors open so long as it is the "next-up" car and its motor generator set is running.

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Should a car arrive at the lower dispatching terminal and there is already a car at that terminal selected "next up", the car arriving will open its doors and close them after normal door time.

If the doors are continually held for a predetermined adjustable time, a buzzer will sound and the photo electric units will be disconnected and that car will automatically be removed from the group supervisory control system and will be designated as out of service. The out of service light will then illuminate in the starter's panel. When the doors are released that car will automatically return to service as part of the group supervisory system.

A "door open" button will be provided in the car operating panel for stopping the closing motion of the doors, returning them to their open position.

XXII. Operation With Attendant

In addition to the devices previously enumerated in "Car Operating Panel", there will also be a start button, up-down reversing buttons, pass button and directional dispatch lights. When the attendant switch is in the position for operation with attendant, automatic door closing will be discontinued and the attendant will have complete control of the doors.

The attendant presses the buttons in the car operating panel corresponding to the floors requested by the passengers entering the car. He then presses the start button which, when the door interlocking circuit is established, will cause the car to start and accelerate automatically to running speed; it will then slow down and stop level at the floors for which buttons have been pressed, regardless of the position of the starting button and of the order in which the buttons were pressed. The car will stop automatically at floor landings in the same manner in response to registered hall calls for the direction in which the car is traveling.

A car traveling in one direction will not stop for hall calls registered for the opposite direction, and such calls will remain registered until answered by a car traveling in that direction. Calls registered in the hall will be cancelled when a car stops for that floor.

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The pass button when held in the pressed position will cause the car to pass the landing calls, but these calls will remain registered for the next approaching car to answer. The pass button will not affect the stopping of the car in response to calls registered in the car. The up and down reversing buttons will permit the reversal of the car at any landing normally served without making a full trip.

XXIII. Door Operation - With Attendant

Upon the stopping of the car at a landing for which a call has been registered, the car and hoistway doors at that floor will open automatically. The doors will close upon the pressure of the start button by the attendant. The doors when closing may be stopped and caused to return to their open position by releasing the start button.

XXIV. Fireman's Service

A fixture will be located in the lobby containing a keyed fireman's service switch and a door open pushbutton. When the lobby fireman's switch is placed in the on position, all cars in the group will dump their registered car calls, stop at the next floor, and return to the lobby floor, bypassing landing calls on the way. All cars can be made to park at the lobby with their doors open for a predetermined, adjustable time after which all doors will close.

When the door open pushbutton in this fixture is pressed, all of the doors can be made to reopen; and then close after the time delay described above. When the fireman's switch is placed in the off position, all cars revert to normal operation.

A fireman's switch is also located in the car station of every car in the group for use after the cars have been called back to the lobby.

When the fireman's switch in a particular car station is actuated, the car calls are made effective in that car. Constant pressure on the door close button will cause the doors to close, and when closed allow the car to run. When a car stops at a selected floor, the doors do not open automatically. Constant pressure of the door open button is required to open the doors; however, once they reach the fully open position, they will remain open until caused to close by constant pressure of the door close button.

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XXV. Basement Service

If two or more cars in the group serve a basement, or a floor below the lobby, that floor will be served as follows:

A. A landing demand at the basement will be assigned in the following order of preference:

1. An available car
2. A distant section guardian car
3. The main lobby section guardian car

B. When a car goes into the basement, it will automatically be returned to the lobby floor.

If only one car in the group serves a basement, or a floor below the lobby, that floor will be served as follows:

A. If the car which has been selected as next up is the only car which serves the basement, the up basement demand will be assigned to it, provided no higher car calls or landing demands have been assigned to it. If higher car calls or landing demands have already been assigned to it, the basement up demand will be answered after these calls have been served.

B. If the only basement serving car is in another section, the up basement demand will be assigned to this car as soon as it is available. The assignment will be made on a priority basis, when this demand reaches the head of the system store.

XXVI. Special FeaturesA. Operation on Emergency Power (Optional)

When operating on emergency power as indicated by a contact break, an alternate low speed shall become effective. Unit shall operate within $\pm 5\% - 10\%$ of nominal line voltage at the controller, 10% frequency changes must be tolerated.

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B. Inspection Operation

Continuous pressure at 85 FPM \pm 10 FPM with soft start and brake stop.

C. Emergency Terminal Slowdown

When reduced buffer stroke is used, provision will be made to monitor the car speed at the terminals. If speed is not reduced resistance must be introduced between output of thyristor and field for emergency slowdown.

D. Governor Overspeed Switch

On breaking of overspeed switch trip is aborted and car stops.

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EXHIBIT B--GUARANTY ANNEXED TO PETITION

G U A R A N T Y

WHEREAS, ARMOR ELEVATOR COMPANY, INC. (Armor), a Delaware corporation, with offices at Louisville, Kentucky, U.S.A., a wholly owned subsidiary of the undersigned, A. O. SMITH CORPORATION, a New York corporation, having its principal place of business at 3533 North 27th Street, Milwaukee, Wisconsin, desires to enter into a license agreement, dated the date hereof with N.V. MAATACHAPPI VOOR INDUSTRIELE WAARDEN (MVIW), a Netherlands Antilles corporation, with offices at Handelskade 8, Curacao, N.A., under which agreement MVIW will grant Armor a license to use Patent and Trademark Rights and Know-how useful to the business of Armor, in consideration of royalty payments to be made by Armor to MVIW over a period of years,

NOW, THEREFORE, for the purpose of inducing MVIW to enter into said agreement and to grant such license to use the Patent and Trademark Rights and Know-how technology, more fully detailed in said license agreement, A. O. SMITH CORPORATION hereby guarantees to MVIW the due performance and prompt payment of all obligations undertaken by Armor in and by said license agreement, without requiring MVIW first to resort to any action against Armor or any other person or to exercise any right conferred upon MVIW in or by said agreement.

A. O. SMITH CORPORATION agrees to remain bound by this Guaranty notwithstanding any waiver, inaction or extension by MVIW or any amendment, modification or waiver of any provision in said license

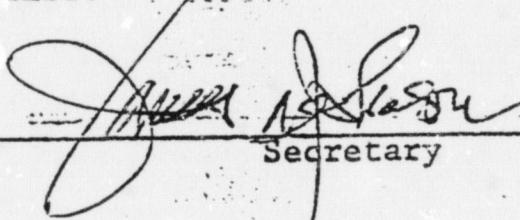
agreement, to all of which A. O. SMITH CORPORATION assents and waives notice thereof.

This is an absolute, unqualified, unconditional guaranty of performance and payment and not of collection and it shall remain in full force and effect irrespective of the termination of said license agreement and of whether such termination shall be by Armor or MVI or otherwise. Dated the date hereof with the

Each reference herein to A. O. SMITH CORPORATION shall be deemed to include the successors and assigns of A. O. SMITH CORPORATION, all of whom shall be bound by the provisions of this Guaranty. Dated this 1st day of October, 1973.

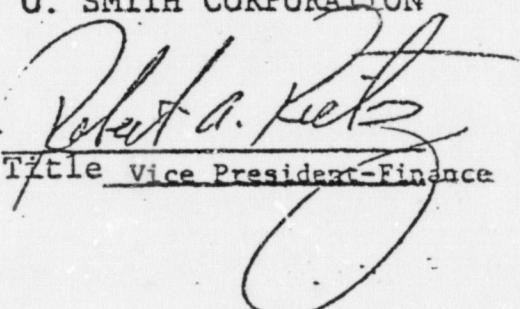
IN WITNESS WHEREOF, the undersigned has executed this
Guaranty as of the 1st day of October , 1973.

ATTEST:



James A. Johnson
Secretary

A. O. SMITH CORPORATION



By Robert A. Keltz
Title Vice President-Finance



90 WILLIAM STREET, SYDNEY, N.S.W. 2011. AUSTRALIA
TELEPHONE: 357-2277
CABLES: BOULEVARD

TELEX: AA 24350

September 20, 1974

John:

I CALLED YOUR OFFICE THIS MORNING
BUT YOU WERE OUT.

THIS MORNING I RECEIVED A PHONE
CALL FROM Tim Houser. HE ASKED
ME TO INFORM YOU OR David THAT
A LETTER WAS IN ROUTE TO YOU AND
THAT YOU NOT SEND ANY DOCUMENTS
TO, Armor.

ONCE AGAIN, Paul AND I WISH TO
THANK YOU AND YOUR STAFF FOR THE
WONDERFUL HOSPITALITY SHOWN US

Sincerely

Charlie Tui.

EXHIBIT D--LETTER AGREEMENT DATED FEBRUARY 18, 1975
ANNEXED TO PETITION

February 18, 1975

James N. Johnson, Esq.
A. O. Smith Corporation
P.O. Box 584
Milwaukee, Wisconsin 53201

Dear Jim:

Re: MVIW - Armor Agreement

This letter will confirm the substance of our telephone conversations including that of today relating to the Agreement made October 1, 1973 between Armor and MVIW.

You requested, as a result of our letter dated November 18, 1974 and the conference held on January 23, 1975 that the following occur:

1. Armor immediately pay the installment of 6250 Australian dollars that was due January 1, 1975.
2. Within thirty (30) days from the date hereof you will furnish us with a report of all claimed deficiencies under the Agreement in the drawings and all other material furnished your client to date.
3. On April 1, 1975 Armor will pay the installment of 6250 Australian dollars then due; and
4. Within ninety (90) days from receipt of the report referred to in Item 2, our client will respond to each of the deficiencies claimed in the report.

- In acceding to your request it is understood by both sides that:

- (a) Our client does not waive its position that your client has defaulted under the agreement nor does it excuse such default.
- (b) Nothing herein contained nor any action taken by our client pursuant to this letter or its receipt and acceptance of the payments above itemized is intended to or shall be construed

P.C.

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as constituting acquiescence in your client's contention that the drawings and other material furnished are in any respects deficient from the requirements of the Agreement or a waiver of our client's contention that your client's breach is continuing; and

(c) The arrangements herein contained do not constitute a waiver or amendment of any of the provisions of the Agreement, nor does your client hereby undertake to cure matters which your client contends are deficiencies and which our client believes transcend the requirements of the Agreement.

The Agreement was entered into by our client for the purpose of receiving the fees set forth in Article VI predicated upon your client fulfilling the undertakings set forth in Article V. You told us during the conference referred to previously that your client had concluded not to proceed with the manufacture, sale and promotion of elevators employing the licensed products which position you recently stated your client is now willing to reverse. Notwithstanding that in our opinion there has been a material default by Armor, which raises the question as to its ultimate intentions, our client is willing to defer pursuing its rights and remedies in the hope that in acquiescing in your request, litigation can be avoided and the purposes of the agreement can still be accomplished.

Cordially,

JS:js

bcc: Mr. Brian Norris

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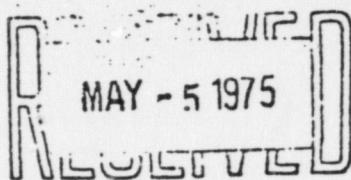
EXHIBIT E--LETTER DATED APRIL 29, 1975
ANNEXED TO PETITION

Andrus, Sceales, Starke & Sawall



MAY - 5 1975

Westinghouse Canada Limited



Box 510
Hamilton Ontario

April 29, 1975

Mr. Merlin Sceales.

Andrus, Sceales, Starke & Sawall
Suite 1102 First Wisconsin National Bank Bld.
735 North Water Street
Milwaukee, Wisconsin 53202

Dear Mr. Sceales:

Re: Armor Elevator Canada Limited

In reply to your letter of April 25th, I must apologize for not responding sooner to your letter of February 26th.

We believe that an elevator built in accordance with Canadian Patent No. 957,791, would probably infringe Canadian Patent No. 908,805 and other related patents covering solid state single car controls.

An elevator system in accordance with Canadian Patent No. 879,957 would probably infringe various Westinghouse patents which I will not list at present since I have not studied the situation in detail.

These situations together with the static power converter situation raised in your letter of April 25th, do not really relate to the situation under discussion in our earlier correspondence.

We would prefer to deal with one subject at a time since, as you appreciate, even one subject is sufficiently complex in the elevator field.

Might I suggest that we conclude the settlement of the situation set forth in my letter of February 3, 1975, and then proceed to consider the matters raised in your subsequent letters.

Very truly yours,

R. H. Fox
Manager, Patent Department

/pm

EXHIBIT F--LETTER DATED MAY 8, 1975
ANNEXED TO PETITION

P.O. BOX 584 • MILWAUKEE, WISCONSIN 53201 • TELEPHONE 414 873-3000



LAW DEPARTMENT

May 8, 1975

JAMES H. JOHNSON, VICE PRESIDENT, SECRETARY & GENERAL COUNSEL
 JOHN H. LUNGREEN, ASST. SECRETARY & DEPUTY GENERAL COUNSEL
 DAVID C. SULLIVAN, ASST. GENERAL COUNSEL (ADM'D. ALSO IN ILL.)
 JAMES A. KOESTER, ASST. GENERAL COUNSEL
 SIGRIO E. DYREK, STAFF ATTORNEY
 CHARLES E. BERGSTROM, STAFF ATTORNEY (ADM'D. ALSO IN CALIF.)

M. James Spitzer, Esq.
 Spitzer & Feldman
 595 Madison Avenue
 New York, N.Y. 10022

Dear Jimmy:

MVIW-Armor Contract

At or around the same time during which Armor and EPL were engaged in negotiations leading to the MVIW contract, Westinghouse-Canada served Armor with notice of infringement of several Westinghouse-Canada patents unassociated with EPL's products. Seeking to diminish or escape the payment of royalties to Westinghouse-Canada, Armor has been engaged, through Merl Sceales, in attempting to determine what patents, if any, Armor might have which could be cross-licensed to Westinghouse-Canada in exchange for licenses under the Westinghouse-Canada patents which are alleged to be infringed by Armor. As you can imagine, progress has been slow.

When Sceales was made aware of the continuing performance by the parties under the MVIW contract, he saw an opportunity to perhaps secure additional concessions from Westinghouse by attempting to determine whether Westinghouse would have any interest in manufacturing in Canada under the EPL patents.

I felt quite at ease in this because of the oft repeated statements of MVIW, and its patent counsel, that, notwithstanding Sceales' opinion to the contrary,



M. James Spitzer, Esq.

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May 8, 1975

the MVIW know-how would not infringe any patents of other persons in the territory, all as supported by MVIW's affirmative covenant in the agreement to "not knowingly convey to Armor" any such prohibited information. Armor elected to believe MVIW rather than Sceales. Therefore, after securing permission from me to do so, Sceales sent copies of EPL Canadian Patents 957,791 and 879,957 (but nothing more) to Westinghouse and informed Westinghouse that Armor intended to commence production under know-how which included such patents, along with inquiring as to Westinghouse's interest in licensing. Similarly, on April 25, Sceales sent information to Westinghouse-Canada pertaining to its probable interest in taking a license under a certain static power converter system owned by Armor to attempt, again, to increase the attractiveness of the package. If Westinghouse indicated an interest, Armor would have applied to MVIW for permission to sublicense which is otherwise prohibited by II (b) of the contract.

Westinghouse has taken almost two months to give consideration to these problems and their answer was received by Sceales on the 5th (and forwarded to me on May 6), in which there is contained the claim by Westinghouse-Canada that an elevator produced in accordance with EPL Canadian Patent Nos. 957,791 or 879,957 would probably infringe Westinghouse-Canada's Canadian Patent No. 908,805, along with other Westinghouse patents which they did not list because they had not studied the situation in sufficient detail.

As you will recognize, the Westinghouse-Canada letter (a copy of which is enclosed herewith) is a "claim (under a Patent or other protective right) by others *** which, if sustained, would prevent Armor from manufacturing or selling the Licensed Products, ***." under Article VIII, Section 1. You will

M. James Spitzer, Esq.

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May 8, 1975

observe, also, that Westinghouse did not commit itself on the license question.

Such a claim having arisen, Armor, under Article VIII, Section 1, is obligated to "promptly give MVIW written notice thereof [so that] MVIW, at its option, may take over and assume (at MVIW's cost) the defense of Armor against *** such claim ***." Please consider this letter (in your capacity as attorney-in-fact for MVIW and by virtue of the request in your March 24, 1975 letter that Armor "channel all material to our firm *** instead of communicating directly with our client") the notice required under the section of the contract I have quoted immediately above. For that purpose, I have transmitted it in the manner required by the contract.

The contract casts a corresponding duty upon MVIW if it "shall elect not to take over the defense [to] so notify Armor in writing within thirty (30) days of the notice by Armor to MVIW ***." If MVIW elects not to defend, then the contract provides that "Armor shall have the option to take over the defense ***."

I have not yet determined which of the various remedies provided for in Paragraph VIII, Section 1, Subsections (a) through (e) should be recommended as most beneficial for the mutual interests of Armor and MVIW. I observe that under VIII 1 (b), Armor has the "option during the period of ninety (90) days thereafter [receipt of the notice], to be exercised upon giving the thirty (30) days prior notice to MVIW, to suspend the use of the rights and licenses granted under this Agreement and the manufacture and sale of Licensed Products and no royalties, minimum or otherwise, shall commence to be earned *** during such period of suspension;" You will see and remember that the elective suspension requires Armor to "suspend the use"

M. James Spitzer, Esq.

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May 8, 1975

of the know-how, which probably would mean that Armor, under the elective suspension, would have no right to secure or examine the response to its Memo Report PE-2 sent to EPL.

Absent exercise by Armor of the elective suspension, then within the 90-day option period provided for, and to which I have just referred, MVIW will have completed and forwarded to Armor its examination of and comments on objections. I by the Armor PE-2 Report, to the latest set of EPL drawings. I would be agreeable without prejudice, of course, if you are and, again, without prejudice, to await the study by Armor of the MVIW comments before proceeding under this elective right of suspension, so long as the process does not consume the option period. Maybe my suggestion is not practical; but I make it because the MVIW observations or redrawn concepts (responsive to Armor's Memo Report PE-2) may aid in defending the claim through securing a license from Westinghouse. That is a judgment MVIW must and should make because of its certainty that no patent infringement exists.

I suppose neither of us really has to be much concerned about the elective period of suspension, as it works on the royalties, because of the provisions of VIII 1 (e) which automatically suspends the payment of earned and minimum royalties by Armor until the termination of such claim or litigation. To be sure, in the latter case dealing with automatic suspension of the royalty obligation of Armor, then at the expiration of that period, the earned and minimum royalties accruing during the period of suspension become immediately payable if no liability exists on the part of Armor; whereas, under the elective suspension, the entire agreement is held in levitation, so to speak, with Armor not entitled to use the know-how and

A 99

Exhibit F Annexed to Petition

M. James Spitzer, Esq.

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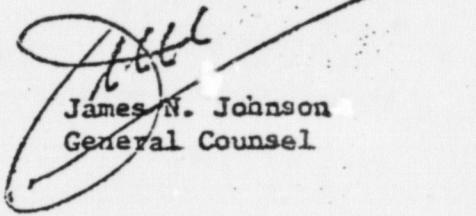
May 8, 1975

being obligated to resume payment of royalties at the conclusion of the suspended period when use resumes.

As soon as I have had an opportunity to confer with Armor principals and thoroughly study what the nature and effect of the difficulty is which is caused by this Westinghouse-Canada claim, I will be in touch with you. In the meantime, we will await MVIW's election of whether to defend. In either event, after we've digested this unfortunate aspect of the matter from the viewpoints of our clients, we ought to sit together to determine how to best handle this mutual problem.

Very truly yours,

A. O. SMITH Corporation



James N. Johnson
General Counsel

JNJ:bjh

Enclosure

AIR MAIL
REGISTERED - RETURN
RECEIPT REQUESTED

A 100

EXHIBIT G--LETTER DATED MAY 12, 1975
ANNEXED TO PETITION

SPITZER & FELDMAN P.C.

COUNSELLORS AT LAW

M. JAMES SPITZER
PHILIP FELDMAN
RONALD J. OFFENKRANTZ
LEONARD LICHTER
M. JAMES SPITZER, JR.
—
KENNETH GLIEDMAN
STANLEY G. SHERWOOD

595 MADISON AVENUE
NEW YORK, N.Y. 10022
(212) 755-1335
CABLE ADDRESS "CHASTRA"

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

May 12, 1975

James N. Johnson, Esq.
A. O. Smith Corporation
P.O. Box 584
Milwaukee, Wisconsin 53201

Dear Jim:

Re: MVIW - Armor Contract

In response to your letter of the 8th, which arrived at about noon today, I find it difficult to restrain my indignation at the course of procedure pursued by Smith-Armor.

You and I have been engaged over the past several months in what was represented to me as a good faith effort to resolve the claimed difficulty between our clients. I was told that Smith-Armor was honestly prepared to go forward under the contract if only the alleged technical shortcomings of the drawings were overcome. Relying thereon, and ignoring my expressed conviction concerning your client's position, our client was urged to cause the desired information to be compiled without prejudice to its position that Smith-Armor was then in default. The information is presently in transit to this office and should be delivered within the next day or two.

Now I am informed that during the very period this was going on, with no disclosure, Smith-Armor has sought to foment another feigned means of avoiding its contractual obligation to our client. With full knowledge that the license was exclusive and permits of no sub-licensing your client set about to provoke the sort of reply that it received so that it could then assert that a claim of infringement had been made. To compound the situation, the sub-license was proposed in an effort to gain an advantage for Smith-Armor in an unrelated matter, while at the same time it was professing its inability to manufacture the product because

SPITZER & FELDMAN P.C.

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of technicalities. And the so-called claim of infringement amounts to nothing more than the knee-jerk reaction of a competitive patent department manager who, upon being advised that a more advanced product would be competitively manufactured and sold, predictably responded that it "would probably infringe" although he "ha[d] not studied the situation in detail". I am not going to pick apart your letter which contains numerous inaccuracies. Instead, I suggest that you forthwith withdraw it and unqualifiedly advise me that upon the technicalities in your schedule being reasonably overcome, Smith-Armor will substantively honor its commitment to manufacture, sell and promote a demand for elevators employing the licensed product. If it is not withdrawn, I do not see how in good conscience we can transmit the material to you or do other than advise our client to proceed to protect its rights under the agreement.

Very truly yours,

SPITZER & FELDMAN P.C.

By M. James Spitzer
M. JAMES SPITZER

MJS:js

<p>• SENDER Complete items 1 and 2. Add your address in the RETURN TO field on the reverse side.</p>	
<p>1. The following service is requested (check one):</p>	
<p><input type="checkbox"/> Show to whom and date delivered..... 354</p>	
<p><input checked="" type="checkbox"/> Show to whom, date, & address of delivery..... 154</p>	
<p><input type="checkbox"/> DELIVER ONLY TO ADDRESSEE and show to whom and date delivered..... 654</p>	
<p><input type="checkbox"/> DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery..... 1954</p>	
<p>2. ARTICLE ADDRESSED TO: <i>James H. Smith, Jr.</i> <i>Smith Corp.</i> <i>53201</i></p>	
<p>3. ARTICLE DESCRIPTION: REGISTERED NO. <u>589113</u></p>	
<p>INSURED NO. <u></u></p>	
<p>(Always obtain signature of addressee or agent)</p>	
<p>I have received the article described above. SIGNATURE: <i>J. J. Spitzer</i></p>	
<p>4. DATE OF DELIVERY <u>MAY 14 1973</u></p>	
<p>5. ADDRESS (Complete only if required)</p>	
<p>6. UNABLE TO DELIVER BECAUSE: <u>US</u> CLERK'S INITIALS: <u></u></p>	

PS Form 3811, Nov. 1973

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

© GPO: 1974 O - 937-63

EXHIBIT H--LETTER DATED MAY 16, 1975
ANNEXED TO PETITION

P.O. BOX 584 • MILWAUKEE, WISCONSIN 53201 • TELEPHONE 414 873-3000



May 16, 1975

JAMES H. JOHNSON, VICE PRESIDENT, SECRETARY & GENERAL COUNSEL
JOHN H. LUNGREN, ASS'T. SECRETARY & DEPUTY GENERAL COUNSEL
DAVID C. SULLIVAN, ASS'T. GENERAL COUNSEL (ADM'D. ALSO IN ILL.)
JAMES A. KOESTER, ASS'T. GENERAL COUNSEL
SIGMUND E. DYNE, STAFF ATTORNEY
CHARLES E. BERGSTROM, STAFF ATTORNEY (ADM'D. ALSO IN CALIF.)

M. James Spitzer, Esq.
Spitzer & Feldman
595 Madison Avenue
New York, N.Y. 10022

Dear Jimmy:

MVIW-Armor Contract

My return to the office today finds your May 12, 1975 letter. I fail to understand your indignation. Surely, you can't believe that Armor's good faith attempts (after serious question on Armor's part as to compliance by MVIW with the contract) to continue to prepare itself for manufacture of licensed products (which included payment of the quarterly minimum royalties) was just a farce. Surely, you can't seriously suggest, even if it was only a "knee-jerk reaction" on the part of Westinghouse Canada, that Armor should ignore the Westinghouse letter putting Armor on notice, and undertake to make the capital investment required to commence manufacture, only to be met with an injunction accompanied by charges of punitive damages by reason of a purposeful infringement of another's patent.

I wrote the letter of notice in a form of continuing cooperation, hoping either that MVIW would undertake to convince Westinghouse directly, as it convinced Armor, that no patent infringement exists; or that to clear the air on patents, your participation in a licensing arrangement could be worked out.



M. James Spitzer, Esq.

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May 16, 1975

I really don't know how we can proceed reasonably in this matter as long as you maintain an attitude of suspicion as to everything that Armor does. You appear to be spoiling for a lawsuit and I don't understand that. I had thought we were all laboring toward the end that this project could work out. I see nothing inconsistent with that attempt in Armor (who was already in patent infringement negotiations with Westinghouse, as MVIW was not) taking the first step toward resolution of patent difficulties, particularly when that step would involve (for MVIW's benefit) Armor contributing its independent patent background to the package which might see the MVIW patent position resolved.

The Armor notice of claim letter of May 8, 1975 is not withdrawn. I am still content to consider postponement of Armor's option of elective suspension (under the conditions set forth in my May 8 letter) unless you desire me to take your May 12 letter as the election by MVIW not to defend Armor against the claim of infringement by Westinghouse. I do not mean you to understand that Armor will make that election in either case; Armor reserves its right of permitting automatic suspension.

I would appreciate hearing from you as promptly as possible on how I should view your May 12 letter in light of Armor's refusal to withdraw its notice of claim.

In our telephone conversation, which took place after I had dictated the foregoing, you continue your suggestion that the whole approach by Armor was in bad faith. I don't know how to disabuse you of that; but perhaps (and I make this observation in the same spirit which you explained in characterizing my actions as questionable) if you were to emphasize less

M. James Spitzer, Esq.

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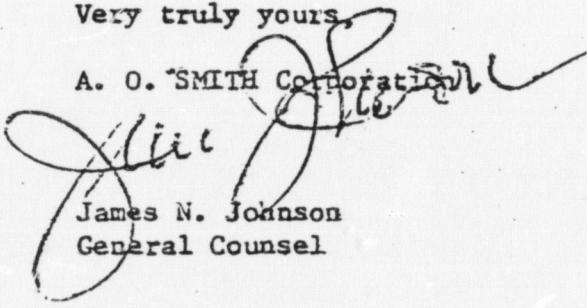
May 16, 1975

the role of advocate and assume that of business counsel, this situation might yet be saved. Nothing in the present situation entitles either Armor or MVIW to terminate, and while I can understand your reluctance to send MVIW explanatory or corrective material which you have, only Armor's exercise of its elective option may entitle you to withhold that material. Perhaps you ought stop and consider that Armor has already paid A \$87,500 (which closely approximates U.S. \$100,000) for it; and you talk about good faith?

The choice is that of MVIW; we can either litigate or negotiate. Litigation could have been undertaken some months ago; I didn't think it the answer then and I don't think it's the answer now. You, evidently, differ.

Very truly yours,

A. O. SMITH Corporation


James N. Johnson
General Counsel

J:NJ:bjh

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Exhibit H Annexed to Petition

P.O. BOX 584 • MILWAUKEE, WISCONSIN 53201 • TELEPHONE 414 873-3000



LAW DEPARTMENT

JAMES H. JOHNSON, VICE PRESIDENT, SECRETARY & GENERAL COUNSEL
JOHN H. LUNGMAN, ASS'T. SECRETARY & DEPUTY GENERAL COUNSEL
DAVID C. SULLIVAN, ASS'T. GENERAL COUNSEL (ADM'D. ALSO IN ILL.)
JAMES A. KOESTER, ASS'T. GENERAL COUNSEL
SIGRID E. DYNER, STAFF ATTORNEY
CHARLES E. BERGSTROM, STAFF ATTORNEY (ADM'D. ALSO IN CALIF.)

May 29, 1975

M. James Spitzer, Esq.
Spitzer & Feldman
595 Madison Avenue
New York, New York 10022

Dear Jimmy:

MVIW - Armor

I've had time now to review your May 23, 1975 letter and apply it to the contract.

As you know, and have emphasized in your letter along with the other occasions to which you refer, the patent question has always been troublesome. Similarly, you know as well as I and other lawyers, that counseling on infringement is a matter of judgment. EPL's patent counsel had an opinion of non-infringement (on which MVIW appears, strangely, reluctant to rely); but other opinions existed. To undertake a proliferation of conflicting opinions was not productive. In such a case, Armor, as a client and as a proposed licensee, was called upon to use its best judgment as to which conflicting opinion on which it would rely. It selected EPL's. Once that selection was made, and the agreement signed, no progress could thereafter be accomplished through continued exchanges of opinions of counsel. In addition, while the searches conducted either by the United States or Canadian patent offices are certainly entitled to great weight, they are not conclusive on the subject.

Your assertion that the Westinghouse letter is not a "claim of infringement"



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Exhibit H Annexed to Petition

M. James Spitzer, Esq.

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May 29, 1975

is not responsive. The contract concerns itself with "any claim (under a Patent or other protective right) by others *** which, if sustained, would prevent Armor from manufacturing or selling the Licensed Products, ***." [emphasis supplied] The contract also concerns itself with Armor's being "charged with infringement of any Patent ***." Perhaps you have the two mixed in some fashion. A "claim" by its nature is conditional, as opposed to a specific charge of patent infringement (under the equivalent of an oath) in a pleading. The contract uses the two elements, "claim" and "charge" in the disjunctive; so that the existence of either sets the succeeding mechanics into motion. The "claim" need not expressly be one of patent infringement as you contend, but only one, whether based on a patent or other property right, which, if sustained, would prevent Armor from manufacturing or selling. How does the contract scheme assume that the "claim" of which it speaks, could be either sustained or dismissed except through the defense mechanism whose use it anticipates? It appears perfectly clear that the Westinghouse letter constitutes a claim of probable infringement and requires MVIW to elect under its option whether to undertake that investigation necessary to establish the basis on which the probable infringement is established and, therupon, either to litigate or to settle with Westinghouse in that fashion which frees Armor from the burden it bears by being put on notice of the claim by Westinghouse.

In view of the foregoing, Armor has no choice but to (1) consider your letter denying that a claim has been made (and suggesting that Armor inform you of its decision to either proceed under the contract or negotiate a financial termination, all without resolution of the claim) as an election

M. James Spitzer, Esq.

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May 29, 1975

by MVIW not to defend; and (2) look upon MVIW's decision not to furnish Armor with its comments on PE-62 as a breach of the agreement. Therefore, Armor elects to defend against the claim and will continue to proceed under the contract, at once, to take up the defense. In the interim, Armor regards the contract as continuing in effect although the automatic suspension of Armor's obligation on royalties will prevail until either Armor (within the time provided for) elects the optional suspension or permits the time for that election to elapse. In either event, that obligation is suspended until the claim is resolved.

Armor is not particularly comforted by your proposal to attempt negotiation of a voluntary financial termination. When Armor first suggested that course, no "event of default" by Armor had occurred nor had any breach of the agreement by Armor been committed; yet, the suggestion was sarcastically belittled as a bad faith breach. In addition, the asserted breach was accompanied by the wholly unrealistic and punitive demand that Armor (who was prompted to make the suggestion because it had serious question as to whether MVIW could or would comply with the contract) settle its obligations under the contract through payment of the full amount of minimum royalties, plus damages. If that is still the full or substantially full objective of MVIW, both of us would be wasting time in pursuing it. However, even if MVIW's position has changed, Armor will not participate in any such negotiations absent MVIW's express agreement that to do so does not constitute an event of default or a breach by Armor, nor a suspension or waiver of its rights under the contract.

Upon your return after June 9 and an opportunity to reflect on the matter, I will bring you current on where the Westinghouse negotiations

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Exhibit H Annexed to Petition

M. James Spitzer, Esq.

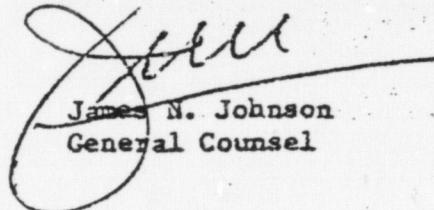
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May 29, 1975

stand and we can, hopefully, determine what is to be done next, either through MVIW resuming performance under the contract or through such other measures as appear appropriate to either of us.

Very truly yours,

A. O. SMITH Corporation


James N. Johnson
General Counsel

JNJ:bjh

EXHIBIT I--LETTER DATED JUNE 3, 1975
ANNEXED TO PETITION

June 3, 1975

James N. Johnson, Esq.
A. O. Smith Corporation
P.O. Box 584
Milwaukee, Wisconsin 53201

Dear Jim:

Re: MVIW - Armor

Your letter of May 29, 1975 was received, as you know, in Jimmy Spitzer's absence.

He will, of course, respond immediately upon his return to the office on Tuesday, June 10, 1975, and under the circumstances I am sure you will accept my suggestion that neither Armor nor A. O. Smith have any contact with Westinghouse.

Sincerely,

RJO:js

A 110

EXHIBIT C -- LETTER DATED JUNE 6, 1975
ANNEXED TO PETITION

P.O. BOX 584 - MILWAUKEE, WISCONSIN 53201 - TELEPHONE 414 873-3000



LAW DEPARTMENT

June 6, 1975

JAMES H. JOHNSON, VICE PRESIDENT, SECRETARY & GENERAL COUNSEL
JOHN H. LUNGREN, ASS'T. SECRETARY & DEPUTY GENERAL COUNSEL
DAVID C. SULLIVAN, ASS'T. GENERAL COUNSEL (ADM'D. ALSO IN ILL.)
JAMES A. KOESTER, ASS'T. GENERAL COUNSEL
SIGRIO E. DYKE, STAFF ATTORNEY
CHARLES E. BERGSTROM, STAFF ATTORNEY (ADM'D. ALSO IN CALIF.)

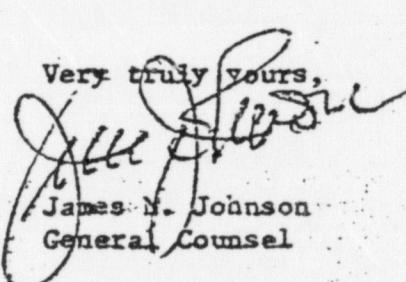
Ronald J. Offenkrantz, Esq.
Spitzer & Feldman
595 Madison Avenue
New York, New York 10022

Dear Ron:

MVIW - Armor

Pursuant to the notice contained in my May 29, 1975 letter that Armor would undertake its contractual right and obligation to defend against the Westinghouse claim, Armor has contacted Westinghouse and will take those measures deemed necessary or advisable to protect its interests in the matter. MVIW had its opportunity, under the contract, to defend and elected not to do so. Your suggestion that Armor also should not do so is beyond my understanding.

Very truly yours,


James M. Johnson
General Counsel

JNJ:bjh



EXHIBIT K--NOTICE AND DEMAND FOR ARBITRATION
ANNEXED TO PETITION

DEMAND FOR ARBITRATION

TO: A. O. SMITH CORPORATION
ARMOR ELEVATOR COMPANY, INC.
35-35 North 27th Street
Milwaukee, Wisconsin

Named claimant, N. V. Maatschappij Voor Industriele
Waarden, party to an arbitration agreement contained in a con-
tract dated October 1, 1973 hereby demands arbitration thereunder.

NATURE OF DISPUTE: Breach of the License Agreement dated October
1, 1973, the performance of which and the payment of all obliga-
tions thereunder are guaranteed by A. O. Smith Corporation, including
the failure to fulfill the obligation to develop and market the
licensed products or gearless elevators embodying the licensed
products or embodying the know-how conveyed pursuant to the Agree-
ment and the failure to pay required royalties; divulgence of confi-
dential know-how to a competitor and attempted sublicensing in viola-
tion of the Agreement dated October 1, 1973; conspiracy to keep
licensed products off the U.S. and Canadian markets while at the
same time precluding licensing by claimant of others.

RELIEF SOUGHT: Minimum royalties in the amount of \$552,500 and all
damages sustained by claimant as a result of respondents' breach;
and a direction that respondents return to claimant all technical
information and know-how furnished and refrain from disclosing such
information to third parties or using such know-how and technical
information themselves.

HEARING LOCALE: New York, New York

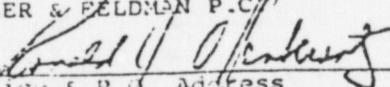
PLEASE TAKE NOTICE that claimant hereby designates Benjamin
Adler of 15 Monroe Avenue, Larchmont, New York as its arbitrator.
Pursuant to the aforesaid Agreement, you are hereby called upon
jointly to appoint your arbitrator.

Dated: New York, New York
June 17, 1975

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN

By their attorneys
SPITZER & FELDMAN P.C.

By


Office & P.O. Address
595 Madison Avenue
New York, New York 10022
Telephone: (212) PL 5-1335

Name of Claimant:

N. V. MAATSCHAPPIJ VOOR
INDUSTRIELE WAARDEN
Handelskade 8, Willemstadt
Netherlands Antilles

PETITIONER'S ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN,75 CIV 3074
(DBB)

Petitioner,

ORDER TO SHOW CAUSE

-against-

A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC., ~~et al.~~FOR PRELIMINARY
INJUNCTION, ETC

Respondents. : -----x

On reading the annexed petition for an order compelling arbitration of the disputes among the parties pursuant to §4 of the United States Arbitration Act and preliminarily and finally enjoining respondents from interfering with the status quo pending completion of arbitration proceedings and upon reading the affidavit of M. James Spitzer sworn to June 23, 1975, ~~then~~
~~IS HEREBY ORDERED THAT~~
~~let~~ the respondents show cause before this Court at the United States Court House, Foley Square, New York, New York, Room ~~405~~
on the 30th day of June, 1975, at 9³⁰ A.M. or as soon thereafter as counsel can be heard why an order should not be made:

1. Preliminarily and finally enjoining and restraining respondents and each of them directly or indirectly through their officers, agents, or employees from negotiating, discussing, or in any way conveying any information, know-how, documents, or any writings of whatsoever nature in respect of the products and

Petitioner's Order to Show Cause for Preliminary Injunction

patents licensed under the Agreement dated October 1, 1973 between petitioner and respondents to Westinghouse (Canada) or any other person, firm, corporation, or entity and from purporting to defend or hold itself out as entitled to defend any claim of patent infringement asserted against petitioner or otherwise interfering with or destroying the status quo pending completion of the arbitration proceeding commenced by petitioner's notice and demand for arbitration served upon respondents on June 17, 1975;

2. Directing respondents to proceed with arbitration in the manner provided for in the Agreement between the parties and directing respondents jointly to designate their arbitrator within the number of days to be set by the Court; and

3. Granting such other and further relief as to the Court may seem just and proper, *IT IS FURTHER ORDERED, THAT*

Copies of this order and the papers upon which it is based shall be served upon the respondents on or before June 25 1975, by Registered Mail, Return Receipt Requested, in accordance with the Agreement of the parties or by delivering a copy thereof to an officer or managing agent or general agent of respondents or to any other agent of respondents authorized to receive suit.

DATED
-Issued at
NEW YORK, N.Y.

June 24 1975.

S/ DUDLEY B. BONSAI
United States District Judge

AFFIDAVIT OF M. JAMES SPITZER IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN,

Petitioner,

in person -against- :
A. O'SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC.,

AFFIDAVIT

... and ~~the~~ ^{the} Respondents.

-----x
STATE OF NEW YORK : SS.:
COUNTY OF NEW YORK :
-----x

M. JAMES SPITZER, being duly sworn deposes and says:

I am an attorney at law duly admitted to practice before
this Court and am a member of the firm of Spitzer & Feldman P.C.
attorneys for the above-named petitioner and maintain an office
at 595 Madison Avenue, New York, New York, in the Southern
District of New York.

The allegations herein made are based upon personal
knowledge since I, on behalf of my firm, was engaged in the
drafting of the License Agreement more fully described in the
petition herein and as to which arbitration proceedings have
been instituted against respondents. I have had personal dis-
cussions with respondents' representatives in respect of an attemp-
ted settlement of the disputes which now must be arbitrated.

This affidavit is submitted in support of the requested preliminary and final injunction which seeks to enjoin respondents pending completion of arbitration proceedings from divulging confidential know-how, contents of documents, and other information relating to United States and Canadian patents to unauthorized third parties and from inducing and provoking purported claims of infringement and holding themselves out as authorized to "defend" such purported claims.

Heretofore and on November 18, 1974, notice was served upon respondents that they were in default in respect of their obligations under the License Agreement dated October 1, 1973. On January 23, 1975, I met with James Johnson, Vice President and general counsel of A. O. Smith Corporation who, on behalf of both respondents, had previously requested that petitioner defer any institution of legal proceedings and who had requested a meeting to discuss the contents of the November 18, 1974 default letter.

At the January 23, 1975 meeting, Mr. Johnson stated that respondents did not intend to proceed further in pursuance of the Agreement, that the market had passed respondents by and that technical deficiencies existed in the drawings which could not be understood by respondents' engineers.

After being apprised of petitioner's position that by virtue of respondents' breach petitioner was entitled to minimum

royalties and substantial damages, Mr. Johnson, after returning to Milwaukee, requested that petitioner, without prejudice to its position that respondents were in default and the default was continuing, permit review by respondents' engineers of additional materials which had been long since shipped by petitioner to respondents, and on Mr. Johnson's authority not accepted, but warehoused instead in the United States Customs warehouse. Mr. Johnson stated that perhaps when those documents were reviewed respondents would change their mind and proceed under the Agreement.

Thereafter Mr. Johnson addressed to the undersigned a letter embodying a purported claim of patent infringement from Westinghouse (Canada), and respondents demanded that petitioner defend such purported claim or that respondents would undertake to defend it and further notified petitioner that in the interim royalties under the Agreement were suspended. The purported claim is not and never has been the subject of any litigation in any court of competent jurisdiction, does not constitute a claim at all, and, as more fully set forth in the petition herein, constituted nothing more than a statement by a Westinghouse (Canada) employee that one of petitioner's patents "probably" infringes but that the matter has not been studied. When respondents were informed by petitioner that the purported claim was induced by respondents in an attempt to avoid responsibility under the License Agreement and that respondents were in breach of the Agreement which breach was continuing, respondents informed

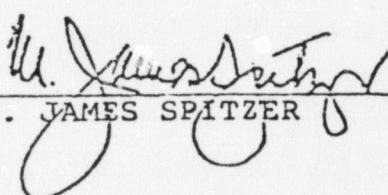
petitioner that notwithstanding the foregoing they would continue to "defend" the purported claim.

Immediately thereafter, arbitration proceedings were commenced by petitioner to secure redress under the Agreement. Respondents were requested, pending completion of the arbitration proceedings, to cease and desist from negotiating any matters pertaining to the License Agreement or to the patents licensed thereunder with Westinghouse (Canada) or with any other corporation and were requested to cease and desist from purporting to "defend" the non-existent claim.

On June 23, 1975, I placed a telephone call to Mr. Johnson and specifically requested of him that he assure petitioner that the status quo would be maintained pending completion of arbitration. That request was rejected and Mr. Johnson stated that respondents intended to proceed with their negotiations with Westinghouse (Canada) and that they had not yet appointed an arbitrator. The Agreement under which arbitration proceedings have been commenced recognizes the confidential nature of the matters divulged to respondents by petitioner and further recognizes the need for injunctive relief to maintain the status quo and restraining a wrongful divulgence of information or any other wrongful act pending completion of arbitration proceedings involving disputes arising under the Agreement.

Petitioner's demand for arbitration was served on June 17, 1975 and poses for resolution by the arbitrators the question of respondents' breach of the Agreement, and the amount of damages to be paid by respondents as a result of that breach. Irreparable harm would be done to petitioner if the status quo were not maintained pending completion of arbitration proceedings and if the confidential material made available to respondents by petitioner were to be disclosed to competing manufacturers. Irreparable harm would also be occasioned if respondents were permitted to continue to "defend" or hold themselves out as authorized to "defend" the non-litigated spurious claim which respondents induced and provoked from Westinghouse (Canada).

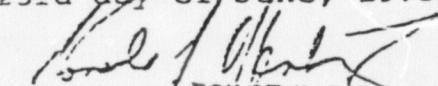
In view of respondents' refusal to maintain the status quo and their stated intent to proceed with negotiations with Westinghouse (Canada) a preliminary and final injunction should be issued as prayed for herein pending completion of the arbitration proceedings. The relief herein requested has not heretofore been made before this or any other Court.



M. JAMES SPITZER

Sworn to before me this

23rd day of June, 1975.


RAYMOND J. SPITZER
Notary Public, State of New York
No. 24-29447-0
Qualified in Kings County
Commission Expires March 30, 1977

RESPONDENTS' ANSWER, COUNTERCLAIM AND CROSS PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, :
Petitioner, : 75 CIV 3074
: :
-against- : RESPONDENTS' ANSWER,
A. O. SMITH CORPORATION and ARMOR : COUNTERCLAIM AND
ELEVATOR COMPANY, INC., : CROSS PETITION
: :
Respondents. :
-----x

Respondents, A. O. Smith Corporation and Armor Elevator Company, Inc. by their attorneys Sacks, Montgomery, Molineaux & Pastore as and for their answer, counterclaim and cross petition to the petition herein on information and belief respectfully allege and show to the court:

1. Admit each and every allegation stated and contained in paragraphs "1", "2", "3", "4", "5", "6", "9", "10", "13", "18", "19", and "21" of the petition.

2. Admit that Armor claimed certain deficiencies in the drawings, sent two of its engineers to certain manufacturing plants located in Australia (none of which were owned by petitioner) for

necessary on-site inspections and explanations; admit sending a letter dated September 20, 1974 to petitioner but except as herein specifically admitted, deny each and every allegation stated and contained in paragraph "12" of the petition.

3. Admit that petitioner, through its attorneys, sent a letter dated November 18, 1974 but except as specifically admitted herein, deny each and every allegation stated and contained in paragraph "14" of the petition.

4. Admit that James N. Johnson, Esq., A. O. Smith's General Counsel and Vice President, met with petitioner's attorney in New York City but except as specifically admitted herein, deny each and every allegation stated and contained in paragraph "15" of the petition.

5. Admit that petitioner's attorney sent to respondent the letter referred to in paragraph "17" of the petition but except as specifically admitted herein, deny each and every allegation stated and contained in paragraph "17" of the petition.

6. Deny that respondent A. O. Smith Corporation has at all times thereafter controlled and otherwise directed the actions of its subsidiary with respect to the agreement but except as specifically denied herein, admit each and every allegation stated and contained in paragraph "7" of the petition.

7. Deny each and every allegation stated and contained in paragraph "16" of the petition except as specifically herein-after alleged by respondents.

8. Deny that Mr. Johnson advised that he would continue his efforts to negotiate a sublicense agreement with Westinghouse but except as specifically denied herein, admit each and every allegation stated and contained in paragraph "22" of the petition.

9. Admit that respondents have not appointed an arbitrator or participated in any arbitration of the issues raised by petitioner in its demand for arbitration but except as specifically admitted herein, deny each and every allegation stated and contained in paragraph "23" of the petition.

10. Deny each and every allegation stated and contained in paragraphs "8", "11", "20", "24", and "25" of the petition.

FOR A FIRST AFFIRMATIVE DEFENSE

11. Petitioner is a corporation incorporated under the laws of the Netherlands Antilles.

12. Petitioner has no other business activity other than with respect to the matters covered by the licensing agreement dated October 10, 1973 ("the Licensing Agreement").

13. The Licensing Agreement was negotiated and accepted by the petitioner and executed by the petitioner in the State of New York.

14. Petitioner, under the terms of the Licensing Agreement, is required to perform certain of its responsibilities in the State of Kentucky.

15. Petitioner has not qualified to do business in the State of New York or the State of Kentucky.

16. Petitioner may not maintain this action because it has performed and is doing business in the States of New York and Kentucky without having qualified to do business in either of those states pursuant to statute.

FOR A SECOND AFFIRMATIVE DEFENSE

17. Respondent, A. O. Smith Corporation, is not a party to the Licensing Agreement and has not agreed to submit any disputes that it might have with petitioner to arbitration.

FOR A THIRD AFFIRMATIVE DEFENSE

18. Respondents have not heretofore agreed with petitioner to submit to arbitration any of the issues raised by petitioner in its demand for arbitration and as set forth in its petition.

**FOR A FOURTH AFFIRMATIVE DEFENSE
AND FIRST COUNTERCLAIM AND CROSS
PETITION**

19. Prior to the time that the Licensing Agreement was entered into, Armor and its sales affiliate were firmly established

in the business of manufacturing and selling elevators and elevator components in the United States and Canada. Armor had determined, however, that in order to preserve its competitive rank in the elevator industry, it would be necessary for Armor to manufacture and sell gearless elevators and elevator systems utilizing controls actuated by electronic circuitry.

Armor further determined that in order to accomplish the foregoing, it required the right to utilize certain of the various patents issued in the United States and Canada covering various components of the gearless elevator car and system. It thereupon commenced negotiations with Lend Lease Corporation, Ltd., an Australian corporation, to obtain a license to utilize certain patents belonging to Elevators Pty, Ltd., an Australian corporation owned by Lend Lease Corporation, Ltd. and to obtain technical information pertaining to the utilization of the patented products.

Subsequently, because of the desire of Lend Lease Corporation, Ltd. to minimize United States income tax liability, it was required by Lend Lease Corporation, Inc. that Armor contract with petitioners (a Netherlands Antilles corporation) which is a subsidiary of International Property Investment, Ltd., a Bermuda corporation which in turn is a subsidiary of said Lend Lease Corporation, Inc. Thereafter, petitioner became the licensee of

the patent rights of Elevator Pty, Ltd. and Armor thereupon entered into the Licensing Agreement with petitioner.

20. Armor's sole motivation and purpose in entering into the Licensing Agreement was to obtain the right to manufacture, sell and install certain products covered by those certain patents of Elevator Pty, Ltd. covered under the Licensing Agreement and to obtain the technical information needed to utilize the patents toward the end that Armor could expeditiously and economically enter the gearless elevator market while that market was still in its infancy and before Armor's competitors who were beginning to enter the market under other patents had achieved an insurmountable head start.

21. Under the Licensing Agreement, petitioner granted Armor an exclusive license to use certain patents for the manufacture and sale within the United States and Canada of certain licensed products to which petitioner had an exclusive license and agreed to provide Armor with technical information sufficient to permit Armor to manufacture and sell the licensed product or to incorporate said products in the manufacture of elevator cars and systems.

22. Under the terms of the Licensing Agreement petitioner warranted and represented: (a) that it would not knowingly convey

to Armor any technical data infringing on the patent of any other person in the United States or Canada and, (b) that the licensed products would fulfill the specific performance criteria and requirements set forth in the Licensing Agreement when manufactured and applied in accordance with technical information to be transferred by petitioner to Armor.

23. The Licensing Agreement further required that, upon delivery to Armor of certain documents in fulfillment of the provisions of the Licensing Agreement, Armor pay to petitioner the sum of \$75,000 Australian dollars (approximately \$106,000 U. S. dollars).

24. Upon the delivery of certain documents to Armor by petitioner, which petitioner purported to be in fulfillment of the Licensing Agreement, Armor paid petitioner the sum of \$75,000 Australian and Armor has subsequently paid petitioner an additional \$12,500 Australian (approximately \$17,000 U.S.) representing "earned minimum royalties" purportedly due under the Licensing Agreement.

25. The Licensing Agreement was entered into as of October 1, 1973, however, notwithstanding the basic underlying purpose contemplated by the parties and solely for which Armor entered into the Licensing Agreement and despite the payments by

Armor to petitioner of \$75,000 Australian, petitioner failed and refused to deliver and furnish to Armor technical information sufficient to permit Armor to manufacture the licensed products in a manner that will fulfill the specific performance criteria and requirements set forth in the Licensing Agreement.

26. Armor has given petitioner repeated written notice of such deficiencies, the latest notification being contained in Product Engineering Memo Report PE-62 dated March 17, 1975, which was transmitted to petitioner on March 19, 1975 but such failure and refusal continues to date.

27. As a result of the foregoing, Armor has been and continues to be unable to manufacture the licensed products to this day and has been irreparably damaged by its resultant inability to enter the gearless elevator industry and has thereby lost its competitive standing in the elevator industry as a whole.

28. As a result of the failure of petitioner to fulfill its representations and warranties as hereinbefore stated, it has materially breached the terms of the Licensing Agreement of which fact it has been notified and refuses to acknowledge but instead chooses to claim that Armor is the one who has breached the agreement.

FOR A FIFTH AFFIRMATIVE DEFENSE
AND SECOND COUNTERCLAIM AND
CROSS PETITION

29. Respondents repeat and reallege each and every allegation stated and contained in paragraphs 19 through 24 of this answer, counterclaim and cross petition.

30. After the Licensing Agreement was entered into by the parties thereto and petitioner supplied Armor with the documents hereinbefore referred to in paragraph 24 of this cross petition, the documents and the patents to which they referred were submitted by Armor to its patent counsel who reviewed same and thereupon advised that in his opinion the patents possibly infringed upon certain United States and Canadian patents held by other persons.

31. The advice from Armor's patent counsel was communicated to the petitioner who thereupon advised petitioner that the matter of possible infringement had previously been considered by it and it was their belief that subsequent technical information would demonstrate that the utilization of petitioner's patents would not constitute an infringement upon any other United States or Canadian patent rights.

32. Subsequently, additional technical information was delivered to Armor by petitioner and the additional technical

information was reviewed by Armor's patent counsel who then advised Armor that if the licensed products under the Licensing Agreement were manufactured in accordance with the patents and the technical information provided, they would definitely infringe upon the rights of several non-expired United States and Canadian patents held by Westinghouse and Westinghouse Canada, Ltd., a non-expired Canadian patent of Hitachi, and several other United States and Canadian patents held by other persons. This patent opinion was also communicated by Armor to petitioner.

33. Armor thereupon was faced with a dilemma because if the petitioner were to provide it with technical information sufficient to permit Armor to manufacture the licensed products in a manner that would fulfill the specific performance criteria and requirements set forth in the Licensing Agreement (which even at this late date has not yet occurred) and if Armor were thereupon to manufacture or sell the licensed products, it would subject itself, according to the opinion of its patent counsel, to lawsuits by the holders of the Westinghouse, Hitachi, and other patents and the assessment of possible injunctive and punitive penalties.

34. Thereafter and on or about February 26, 1975, Armor through its patent counsel, communicated with Westinghouse Canada, Ltd. and advised that it was considering manufacturing and selling

an elevator system utilizing two of the Canadian patents contained in the Licensing Agreement and requested a statement from Westinghouse Canada, Ltd. whether any of the circuitry in the aforesaid patents would be claimed by Westinghouse Canada, Ltd. to infringe upon anything contained in patent issued to Westinghouse Canada, Ltd.

35. Subsequently, on April 29, 1975, Westinghouse Canada, Ltd. responded to the inquiry of Armor's patent counsel and stated that it believed that an elevator built in accordance with the patents covered under the Licensing Agreement would probably infringe upon a certain specified patent of Westinghouse Canada, Ltd. and other related patents and that an elevator system built in accordance with the patents covered under the Licensing Agreement would probably infringe upon various other patents of Westinghouse Canada, Ltd.

36. Article VIII of the Licensing Agreement in effect provides: (a) that in the event any claim (under a patent or other protective right) by others shall arise which, if sustained, would prevent Armor from manufacturing or selling the licensed products, Armor shall give petitioner notice thereof and petitioner, at its option, may take over and assume the defense of Armor against any such claim; (b) that in the event that petitioner shall elect not to take over the defense, then Armor shall have

the option to take over such defense; (c) that Armor may, whether it elects to take over such defense or not, at any time cancel and terminate the Licensing Agreement subject to its termination of the use of the patents and technical information theretofore received by it from petitioner and the payment of adjusted earned royalties and earned minimum royalties as provided in the Licensing Agreement; (d) that from the date of assertion of such claim of patent infringement, no earned royalties or earned minimum royalties shall be payable by Armor to petitioner until the termination of such claim; and (e) that if Armor, as a result of any such claim, shall be required or shall find it reasonably necessary to enter into a licensing agreement with any other person and be required to pay royalties thereto, then Armor shall have the option to cancel the Licensing Agreement forthwith and be released from the obligation to make payment to petitioner of earned royalties and earned minimum royalties otherwise due and payable prior to the date of such cancellation.

37. The correspondence between Armor and Westinghouse Canada, Ltd. hereinbefore referred to in paragraphs "34" and "35" of this cross petition was communicated to petitioner by Armor and a demand made that petitioner defend against the claim of Westinghouse Canada, Ltd. of patent infringement. Petitioner

thereupon refused to acknowledge that a claim existed and refused to defend against such claim in accordance with the Licensing Agreement.

38. Armor, having been advised by its patent counsel as hereinabove alleged, that the patents covered under the Licensing Agreement definitely infringed upon the patents of Westinghouse and others and having received a claim of infringement from Westinghouse Canada, Ltd. thereupon determined it would attempt to enter into a licensing agreement for the use of other patents that would permit it to manufacture products necessary for gearless elevators and systems.

39. Accordingly, Armor has commenced negotiations with Westinghouse Canada, Ltd. to obtain a non-exclusive license agreement from it with respect to various Westinghouse patents that would permit Armor to engage in the business of the manufacture and sale of gearless elevator cars and systems.

40. Petitioner has been advised of the foregoing and has denied Armor's right to negotiate or enter into an agreement with Westinghouse Canada, Ltd. or anyone else, and has sought by its petition and demand for arbitration to preclude Armor from doing so in the future.

41. In the event Armor is precluded from so negotiating with third parties because of the patent infringement and the

claim of patent infringement as alleged herein and the petitioner's failure and refusal to fulfill its representation and warranties as hereinbefore alleged in paragraphs 19 and 28 of this cross petition. Armor has unlawfully, illegally and unduly been restrained from competing and participating in the elevator industry and has been irreparably damaged as a result thereof.

FOR A SIXTH AFFIRMATIVE DEFENSE
AND THIRD COUNTERCLAIM AND
CROSS PETITION

42. Respondents repeat and reallege each and every allegation stated and contained in paragraphs 19 through 24 and 30 through 41 of this answer, counterclaim and cross petition.

43. Petitioner, its agents, representatives, servants and employees actually knew or had sufficient information available to it that it should have known that the patents and technical information pertaining thereto covered by the Licensing Agreement infringed upon various patents of Westinghouse Canada, Ltd. and other persons despite its specific representation to the contrary in the Licensing Agreement.

WHEREFORE, respondent demands that the court adjudge:

1. That the petitioner's application for a temporary injunction be denied.

2. That petitioner's application for a direction that respondents proceed with arbitration be denied and that the issues presented by the petitioner under its demand for arbitration and in the petition be deemed by the court as issues that the parties have not agreed to submit to arbitration under the Licensing Agreement or any other agreement.

3. That the petitioner be enjoined and restrained from proceeding with the arbitration of such issues.

4. That this court retain jurisdiction to hear and determine all of the matters for which arbitration is sought by petitioner and for those new matters alleged herein by respondents.

With respect to the First
Counterclaim and Cross
Petition

5. A declaratory judgment that petitioner has materially breached the terms and provisions of the Licensing Agreement as a result of:

(a) A material breach of a condition subsequent that was so essential to the underlying purpose of the Licensing Agreement as to be considered a destruction of the entire consideration for the Agreement.

(b) A failure and refusal to deliver technical information sufficient to permit Armor to manufacture

Respondents' Answer, Counterclaim and Cross Petition

the licensed products in a manner that would fulfill the specific performance requirements warranted in the Licensing Agreement.

(c) Substantial delay in the delivery of said technical information that has caused irreparable damage to respondents.

(d) Misrepresentation by petitioner as to its possession and ability to transmit to Armor said technical information.

6. A declaratory judgment that the Licensing Agreement and the guarantee of respondent A. O. Smith Corporation be declared terminated, cancelled, rescinded and rendered null and void by reason of material and substantial breaches by petitioner of said Licensing Agreement and its underlying purpose and that the respondents be relieved of all responsibility and liability thereunder.

With respect to the Second Counterclaim and Cross Petition:

7. A declaratory judgment that petitioner has materially breached the provisions of the Licensing Agreement.

8. A declaratory judgment that the Licensing Agreement and guarantee of respondent A. O. Smith Corporation be declared terminated, rescinded and rendered null and void by reason of the

above material and substantial breaches by petitioner of said Licensing Agreement and its underlying purposes and that the respondents be relieved of all responsibility thereunder.

9. A declaratory judgment that the Licensing Agreement is illegal, null and void as an undue restraint on trade and against public policy and, in any event, unenforceable against the respondents.

10. A declaratory judgment that there is an existing claim that the patent covered under the Licensing Agreement infringes with the patent of another person.

11. A declaratory judgment that Armor has the right under the Licensing Agreement to defend the claim asserted by Westinghouse Canada, Ltd.

12. A declaratory judgment that Armor has the right to negotiate with Westinghouse Canada, Ltd. or any other person as it sees fit for the purpose of entering into a licensing agreement that would enable Armor to engage in the manufacture and sale of gearless elevators and systems or any other product.

13. A declaratory judgment that in the event that Armor enters into a licensing agreement with any third person, it has the option to cancel the within Licensing Agreement and should it exercise the option to cancel, it shall be released from obligation to make further payment to petitioner.

With respect to the Third
Counterclaim and Cross
Petition

14. A declaratory judgment that the Licensing Agreement and guarantee of respondent A. O. Smith Corporation be declared terminated, cancelled, rescinded and rendered null and void by reason of the misrepresentation of the petitioner and that the respondents be relieved of all responsibility and liability thereunder.

And, Respondent further demands that the court:

15. Adjudge and direct petitioner to repay to Armor the monies heretofore paid to petitioner by Armor under the Licensing Agreement.

16. Ascertain and award damages to respondent.

17. Direct petitioner to pay the cost of this action and disbursements.

18. Demand and direct such other different and further relief and declaration of rights of legal relations of the parties to this action as to the court may be just, proper and necessary in the premises.

Dated: New York, New York
June 30, 1975

SACKS, MONTGOMERY, MOLINEAUX & PASTORE

By: _____

A Member of the Firm
437 Madison Avenue
New York, New York 10022
Tel. (212) 355-4660

AFFIDAVIT OF JAMES N. JOHNSON IN OPPOSITION TO MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, : Index No.
Petitioner, : 75 CIV 3074
-against- : AFFIDAVIT OF
A. O. SMITH CORPORATION and ARMOR : JAMES N. JOHNSON
ELEVATOR COMPANY, INC., : IN OPPOSITION
: TO APPLICATION
: FOR TEMPORARY
: INJUNCTION

Respondents. :

----- -x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JAMES N. JOHNSON, being duly sworn, deposes and says:

1. He is now, and at all times referred to herein, was general counsel of A. O. Smith Corporation and, in such capacity, rendered legal services to and for A. O. Smith Corporation and each of its subsidiary companies, among which are Armor Elevator Company, Inc. (herein called "Armor U.S.") and Armor Canada, Ltd. (herein "Armor Canada"), and he makes this affidavit in opposition to petitioner's application for a temporary injunction and to correctly state certain misstate-

ments of fact in petitioner's supporting affidavit.

2. In the aforesaid capacity, as general counsel, for Armor U.S. and Armor Canada, he was called upon to render legal services to them by virtue of the receipt by Armor U.S. of a letter dated November 18, 1974, from M. James Spitzer, Esq. (a copy of which is attached hereto as Exhibit A) who had acted both as counsel for petitioner in drafting the licensing agreement made the subject of within litigation, and as attorney-in-fact for the petitioner in execution of such licensing agreement and, from time to time, was the receipt and transmittal of realty payments and know-how documents.

3. As appears in and by Exhibit A, it was Mr. Spitzer who suggested that a discussion take place with respect to an assessment of the respondents' position for the purpose of "resolution of our client's claim." Exhibit A is contrary to the assertion set forth by Mr. Spitzer in his affidavit of June 24, 1975, on file in this litigation in support of petitioner's application for an injunction. In that affidavit, Mr. Spitzer asserts that it was the affiant who requested the meeting. Whereas, in fact, it was Mr. Spitzer who urged the discussion which took place at the meeting on January 23 to

which affiant by consent and in which he participated.

4. Mr. Spitzer fails in his June 24, 1975 affidavit as he had failed in his November 18, 1974 letter, to mention that to the extent either the "Mr. Gill" referred to in the November 18, 1974 letter, or the affiant, had not mentioned in Mr. Spitzer's June 24, 1975 affidavit, stated that respondent no longer intended to proceed under the contract, each of them did so (and had so informed petitioner) because of petitioner's continuing failure to timely provide the know-how required under the licensing agreement with the result that Armor New York and Armor Canada had lost the opportunity to establish primacy in the elevator market and the purpose for which Armor New York and Canada had entered into the licensing agreement had been frustrated.

5. In rendering the legal service to Armor U.S. and Canada, affiant was made aware of the likelihood of infringement of the patents of others by the patents and know-how purportedly made available for use by Armor U.S. and Armor Canada under the licensing agreement in question; but affiant and his clients relied upon the categorical statements of petitioner's assignor, Elevators Proprietary, Ltd. (herein "EPL")

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Affidavit of James N. Johnson

that no such infringement existed or would exist, such reliance being founded on possession of the manufacturing know-how by EPL and processes the use of which might avoid infringement of the patents of others, notwithstanding that the claims of the EPL patents read substantially on the patents of others.

6. Review by Armor's patent counsel of the additional information supplied by EPL to Armor and to which Mr. Spitzer refers in the fourth paragraph on page two of his June 24, 1975 affidavit, disclosed that the EPL patents in question clearly infringed upon those held by Westinghouse Canada and Hitachi, both in the United States and Canada because the manufacturing processes contained within the know-how did not disclose a method of construction that would avoid infringement. Affiant was further informed by Armor's patent counsel that EPL either knew, or in the exercise of reasonable caution, should have known of such infringement prior to entering into the licensing agreement.

In these reasons it is respectfully urged that the court deny petitioner's application for a temporary injunction.

7. Armor Canada and Westinghouse Canada had been engaged in dispute as to infringement by Armor Canada of

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Affidavit of James N. Johnson

would prevent Armor Canada from manufacturing or selling products deriving from either EPL Canadian Patents 957, 791, or any know-how related thereunto.

In the event this court grants petitioner's application for a temporary injunction, Armor's ability to do business in the elevator industry will be further impaired. Accordingly, it is requested that security in excess of \$1,000,000 be fixed by the court as security under Rule 65(c).

Judith A. Cohen

Sworn to before me this
30th day of June, 1975

Judith A. Cohen

JUDITH A. COHEN
NOTARY PUBLIC, State of New York
No. 451369
Qualified in Queens County
Commission Expires March 30, 1977

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Affidavit of James N. Johnson

certain patents of Westinghouse Canada which were (unrelated to the EPL patents) for many months, and in hopeful solution thereof, had become engaged in determining the extent, if any, to which each of them might have available for cross-licensing patented designs or products useful in the elevator business in Canada. Affiant authorized Armor's patent counsel to attempt to determine from Westinghouse Canada whether the EPL patents might be useful to Westinghouse by way of cross-licensing if Westinghouse considered the EPL patents as infringing on those of Westinghouse. Armor's patent counsel made such inquiry and was informed by Westinghouse that as to EPL Canadian Patent Number 957, 791, specifically, it probably infringed Westinghouse Canadian Patent Number 908, 805 and other related Westinghouse patents as well. In addition, Westinghouse informed Armor's patent counsel that EPL Canadian Patent Number 879, 957, would probably infringe various other Westinghouse Canadian patents which Westinghouse did not list because Westinghouse had not completed study of the situation in detail. Thus, the position which Westinghouse Canada has taken with respect to EPL Canadian Patent Number 957, 791 constitutes a claim of infringement which claim, if sustained,

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EXHIBIT A--LETTER DATED NOVEMBER 18, 1974 ANNEXED
TO AFFIDAVIT OF JAMES N. JOHNSON

SPITZER & FELDMAN P.C.

COUNSELORS AT LAW

M. JAMES SPITZER
PHILIP FELDMAN
RONALD J. OFFENKRANTZ
LEONARD LICHTER
M. JAMES SPITZER, JR.
KENNETH GLIEDMAN
STANLEY G. SHERWOOD

NOV 21 1974

505 MADISON AVENUE
NEW YORK, N.Y. 10022
—
(212) 755-1335
CABLE ADDRESS "CHAETRA"

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 18, 1974

Armor Elevator Company, Inc.
5534 National Turnpike
Louisville, Kentucky 40214

Robert E. Gill, President

Gentlemen:

As you know, we were counsel to N.V. Maatschappij Voor Industriële Waarden, Curacao, N.A., in the negotiation and preparation of the License Agreement dated October 1, 1973 that it entered into with you.

It has submitted to us and we have examined a file of correspondence, cables, memoranda, etc. transmitted during the interim period and have received a summary of Mr. Gill's recent conversation with Mr. Brian Norris.

In our opinion, and we have so advised our client, there has been a clear breach of the Agreement by you in that, among other things, you have never fulfilled the obligations provided for in Article V to manufacture, promote and sell gearless elevators employing the licensed products. We understand that Mr. Gill confirmed that you have no intention so to do. The file plainly indicates that almost from the inception you have set up straws to give a specious appearance of reasonableness for your obvious failure to perform your undertaking.

We have been instructed to take the appropriate legal steps to protect our client's interest and recover substantial damages. Before going forward we are writing to inquire whether you wish to reassess your position and discuss a resolution of our client's claim. Should we not

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Exhibit A Annexed to Affidavit of James N. Johnson

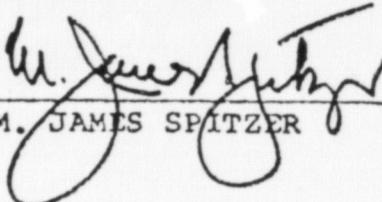
SPITZER & FELDMAN P.C.

-2-

hear from you within the next ten (10) days, we shall proceed without further communication with you.

Very truly yours,

SPITZER & FELDMAN P.C.

by 
M. JAMES SPITZER

MJS:js

cc: Merl E. Sceales, Esq.
Messrs. Andrus, Sceales, Starke & Sawall
Suite 1102
First Wisconsin National Bank Building
735 North Water Street
Milwaukee, Wisconsin 53202

REPLY AFFIDAVIT OF M. JAMES SPITZER IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN,

Petitioner, :

AFFID. VIT

-against-

A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC., :

Respondents. :

-----x
STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

M. JAMES SPITZER, being duly sworn, deposes and says:

I am a member of the firm of Spitzer & Feldman P.C.,
attorneys for petitioner herein and I make this reply affidavit
in support of the relief sought in the within Order to Show Cause.

There are numerous factual misstatements in respondents'
answer, counterclaim, and cross-petition, some of which warrant
reply, namely:

PLACE OF NEGOTIATION, ACCEPTANCE AND EXE-
CUTION OF LICENSE AGREEMENT AS BEARING
UPON PETITIONER'S FIRST AFFIRMATIVE DEFENSE

It is alleged (¶13) that the agreement was negotiated,
accepted and executed by the petitioner in the State of New York.

Reply Affidavit of M. James Spitzer

The initial negotiations took place in Sydney, Australia, where respondents officers sought out petitioner's licensor for the purpose of interesting it in granting the license which is the subject matter of the License Agreement.

Thereafter, representatives of petitioner's licensor had meetings with respondents in Louisville, Kentucky and Milwaukee, Wisconsin.

Subsequently, when I commenced to handle the negotiations, they took place by telephone between Milwaukee, Wisconsin and New York and between Louisville, Kentucky and New York, and there were meetings which I attended in Milwaukee and Louisville, as well as two meetings with respondents' counsel in New York.

The License Agreement was executed in Toronto, Canada on September 25, 1973 by an officer of respondent, Armor and by myself as attorney-in-fact for petitioner.

The guarantee by respondent Smith was executed in Milwaukee and was witnessed by Smith's Vice President and general counsel, James N. Johnson.

Petitioner at no time had or has any place of business in New York or elsewhere in the United States and has no officers, books, records or bank accounts located in this country and does

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not do business either in New York or Kentucky, as alleged in respondents' answer.

RESPONDENT SMITH'S CONTROL AND DIRECTION
OF RESPONDENT ARMOR FROM THE INCEPTION
OF THIS MATTER

From the inception through to the current date every phase of the transaction was under the direct supervision and control of respondent Smith and indeed even after the execution of the agreement, the initial payment and the two small minimum royalty installments (before such payments were suspended) were made by respondent Smith.

My original instructions were to work directly with Mr. Johnson in an effort to finalize the License Agreement and drafts were sent directly to him. Thereafter my dealings were with Merl E. Sceales, Esq., of the law firm of Andrus, Sceales, Starke & Sawall, of Milwaukee, Wisconsin, who advised me that he had formerly been employed under Mr. Johnson in respondent Smith's offices and now acted as Smith's outside patent counsel.

My file is replete with letters from Mr. Sceales to me with copies to Mr. Johnson. On numerous occasions when I was concerned about the inordinate delay in negotiating the agreement and the inability to reach definitive agreements with Mr. Sceales,

he advised me that all dealings were subject to Mr. Johnson and no agreement could be finalized on any point without Mr. Johnson's prior approval.

Prior to the execution of the License Agreement I attended a conference at the offices of respondent, Armor in Louisville, Kentucky, on September 6, 1973, with Robert Gill, President of Armor, Mr. Houle, its chief engineer from Milwaukee, Wisconsin (in the home offices of Smith) and Mr. Sceales. At the end of the conference, when I thought we had resolved all open items, I was then informed by Messrs. Gill and Sceales that everything discussed was tentative, that no commitment could be made until reviewed with Smith officials in Milwaukee, Wisconsin on September 12th, at which time Mr. Johnson and other officers of Smith would determine whether to go ahead with the agreement and on what terms.

Smith's involvement continued subsequent to the execution of the grant and included payments by it of the three payments made to petitioner, one in the amount of 75,000 Australian Dollars and two in the amount of 6250 Australian Dollars.

My firm is in possession of letters confirming that in September, 1974 two engineers from Milwaukee went to Sydney, Australia for the purpose of inspecting the facilities, installa-

tions, etc. (including more than 100 elevators in service and constructed utilizing the Know-how and patents licensed to respondents), and to review the drawings and other material.

On the day of their departure, while they were still in Sydney, namely, on September 20, 1974, Mr. Gill of Armor wrote a letter (a copy of which is an Exhibit to the Petition), suggesting the termination of the agreement. Significantly, copies are shown on the letter to have been sent to Messrs. Johnson and Houle and I have been informed and believe that the original draft of the letter, prepared by Mr. Gill, was submitted to Mr. Johnson, revised by him and transmitted only after it had received Mr. Johnson's approval and pursuant to his instructions.

Respondent Smith's control and influence pervaded every aspect of this transaction even to the point that when the two engineers in Australia requested certain documents it was at Mr. Johnson's direction that those documents were not removed from the United States Government warehouse until early this year following a meeting that I had with him for the purpose of attempting to resolve the dispute arising out of respondent's default

Not only had Smith executed its unqualified guarantee of Armor's performance to induce petitioner to execute the License Agreement, it undertook to and controlled acts of its subsidiary

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through and including its response to the notice of default sent in November, 1974 and extending to the meeting in New York calculated to resolve the disputes but which was used, instead, as a springboard for Smith's approach to Westinghouse.

PATENT SITUATION

Obviously for purposes of coloration and to raise issues as to patents where none exist, respondents' answer alleges (¶¶35-41) that it was not until "After the Licensing Agreement was entered into" that the documents and patents were referred to patent counsel who advised the possibility of patent infringement.

Annexed hereto, made part hereof and marked Exhibit 1 is a copy of a letter dated August 22, 1974 from Mr. Sceales' firm to Mr. Houle relating to patents. There are two noteworthy aspects of the letter, namely:

1. The letter refers to previous letters sent by Mr. Sceales' firm "to Mr. James N. Johnson dated December 11, 1972, December 20 1972 which listed a number of patents which could be pertinent to the EPL system and possible infringement". Those letters were written

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approximately ten months before the License Agreement was executed.

2. As late as August 22, 1974 approximately six months after the Agreement had been signed, Mr. Sceales' firm wrote that:

"We have not studied the EPL system in detail and thus we are not rendering any opinion as to possible infringement at this time. * * * We will not proceed to review the EPL system for possible infringement unless requested to do so by Armor."

At various times during the negotiation of the License Agreement, respondents' counsel raised the question of patents. My consistent position was that petitioner would make no representation or warranty as to patents and that Smith-Armor which was long experienced in the elevator field should make any investigation that it considered appropriate and determine for itself the viability of our client's patent structure and whether Smith-Armor wished to proceed.

At the meeting previously referred to in Louisville,

Kentucky, the subject of patents again arose and I took the identical position. At the conclusion of the meeting in the presence of Messrs. Gill, Houle and Sceales, I sent a telex which in part read as follows:

"Gill meeting with A. O. Smith officials Sept. 12 to review entire agreement. Patent infringement potential still of concern to them. May require more extensive investigation before proceeding. Gill to advise me Sept. 13."

On or about September 13th, both Messrs. Gill and Sceales advised me that Smith officials, including Mr. Johnson by name had concluded to proceed with the finalization and execution of the License Agreement.

By letter dated November 18, 1974, a copy of which is attached as Exhibit 2, my firm advised Armor and Smith's counsel that it was in default. Thereafter, as stated in my prior affidavit herein, a meeting was held in my firm's offices with Mr. Johnson and his assistant at which time the only complaint was that the drawings, plans, specifications, etc.. had technical omissions and deficiencies. Not one word was stated about

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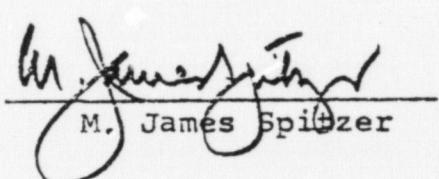
patents and there was no allegation that manufacture, pursuant to the patents and Know-how would involve an infringement of the patents of any other organization. Moreover, there was no hint or disclosure that promptly thereafter, Smith would surreptitiously communicate with Westinghouse (Canada) in an obvious effort to blunt the anticipated proceedings by petitioner for recourse as the result of respondents' default. It was only as an after-thought, following such meeting that respondents took steps in that direction. In my letter of February 18, 1975 (Exhibit D to Petition) the substance of the meeting and the subsequent telephone conversations was reviewed, coinciding with what is stated hereinabove in this affidavit. No part of that letter has been contradicted by Mr. Johnson in any oral or written communication. In fact, Mr. Johnson has failed to submit to this Court any sworn statement contradicting any of the assertions in my prior affidavit or supporting the allegations contained in the purported counter claim and cross petition.

In view of the request of Respondents' counsel, we are submitting to the Court, as a substitute Exhibit A, a copy of the License Agreement which includes all schedules and other documents attached to the original Agreement. It is respectfully suggested that a review of those schedules by the Court will reflect the

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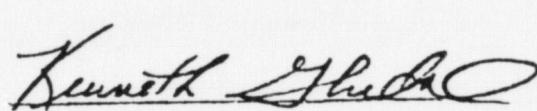
Reply Affidavit of M. James Spitzer

massive amount of documentation which was to be supplied to Respondents after the signing of the Agreement and will also reflect the reason why it is essential that the petitioner be granted not only its preliminary and permanent injunctions restraining Respondents from divulging the confidential information contained therein but also be granted a temporary restraining order pending a decision on the application to compel arbitration since the divulgence of this confidential Know-how would cause irreparable harm to petitioner.



M. James Spitzer

Sworn to before me this
2nd day of July, 1975.



KENNETH GLIEDMAN
Notary Public, State of New York
No. 31-4518427
Qualified in New York County
Commission Expires March 30, 1976

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EXHIBIT 1--LETTER DATED AUGUST 22, 1974 ANNEXED TO
REPLY AFFIDAVIT OF M. JAMES SPITZER

LAW OFFICES

ANDRUS, SCEALES, STARKE & SAWALL

SUITE 1102 FIRST WISCONSIN NATIONAL BANK BUILDING
735 NORTH WATER STREET
MILWAUKEE, WISCONSIN 53202

TELEPHONE
414) 271-7590
CABLE ADDRESS
APT-STARK
PATENTS AND
TRADE MARKS

August 22, 1974

ELWIN A. ANDRUS
MERL E. SCEALES
GLENN O. STARKE
EUGENE R. SAWALL
GUNTHER W. HOLTZ
FRANK S. ANDRUS
DANIEL D. FETTERLEY
GEORGE M. SOLVESEN

Mr. Tim Hoile
Armor Elevator Company, Inc.
P. O. Box 584
Milwaukee, Wisconsin 53201

Re: EPL System

Dear Tim:

In reviewing a number of patents during our study concerning Armor's Simplex/Duplex system, certain patents were noted which might cause future legal conflict with respect to the EPL system and particularly the Thyroglide III portion as follows:

Westinghouse	3,040,838
Westinghouse	3,519,104
Westinghouse	3,589,474
Westinghouse	3,779,346
Reliance	3,417,842
Reliance	3,511,343
Reliance	3,450,231
Reliance	3,783,974
Swiss	3,225,869
Otis	Re. 27,185.

We have not studied the EPL system in detail and thus we are not rendering any opinion as to possible infringement at this time. The above listed patents were noted by Mr. Duckwall and Mr. Kopydlewski as possibly being pertinent to the EPL system and warranting further study.

We also refer to our letters to Mr. James N. Johnson dated December 11, 1972 and December 20, 1972 which listed a number of patents which could be pertinent to the EPL system and possibly infringed.

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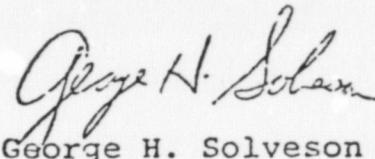
Exhibit 1 Annexed to Reply Affidavit of M. James Spitzer

Mr. Tim Houle
August 22, 1974
Page - 2 -

We will not proceed to review the EPL system for possible infringements unless requested to do so by Armor.

Sincerely,

ANDRUS, SCEALES, STARKE & SAWALL


George H. Solveson

GHS/mv

cc: Mr. Paul Duckwall

EXHIBIT 2--LETTER DATED NOVEMBER 18, 1974 ANNEXED
TO REPLY AFFIDAVIT OF M. JAMES SPITZER

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

November 18, 1974

Armor Elevator Company, Inc.
5534 National Turnpike
Louisville, Kentucky 40214

Robert E. Gill, President

Gentlemen:

As you know, we were counsel to N.V. Maatschappij Voor Industriële Waarden, Curacao, N.A., in the negotiation and preparation of the License Agreement dated October 1, 1973 that it entered into with you.

It has submitted to us and we have examined a file of correspondence, cables, memoranda, etc. transmitted during the interim period and have received a summary of Mr. Gill's recent conversation with Mr. Brian Norris.

In our opinion, and we have so advised our client, there has been a clear breach of the Agreement by you in that, among other things, you have never fulfilled the obligations provided for in Article V to manufacture, promote and sell gearless elevators employing the licensed products. We understand that Mr. Gill confirmed that you have no intention so to do. The file plainly indicates that almost from the inception you have set up straws to give a specious appearance of reasonableness for your obvious failure to perform your undertaking.

We have been instructed to take the appropriate legal steps to protect our client's interest and recover substantial damages. Before going forward we are writing to inquire whether you wish to reassess your position and discuss a resolution of our client's claim. Should we not

Exhibit 2 Annexed to Reply Affidavit of M. James Spitzer

P.C.

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hear from you within the next ten (10) days, we shall proceed without further communication with you.

Very truly yours,

SPITZER & FELDMAN P.C.

by

M. JAMES SPITZER

MJS:js

cc: Merl E. Sceales, Esq.
Messrs. Andrus, Sceales, Starke & Sawall
Suite 1102
First Wisconsin National Bank Building
735 North Water Street
Milwaukee, Wisconsin 53202

EX PARTE ORDER DATED JULY 7, 1975 EXTENDING
PETITIONER'S TIME TO ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- -x

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE	:	EX PARTE ORDER EXTENDING
WAARDEN,	:	PETITIONER'S TIME TO
Petitioner,	:	ANSWER OR OTHERWISE
-against-	:	MOVE
A. OI SMITH CORPORATION and ARMOR	:	75 Civ. 3074
ELEVATOR COMPANY, INC.,	:	(D B B)
Respondents.	:	

----- -x

The Court having read and considered the allegations contained in the Petition and respondents' answer containing their counterclaim and cross petition, and petitioner having moved this Court for an order pursuant to Rule 6(b) FRCP extending petitioner's time to answer or otherwise move in regard to respondents' answer containing their counterclaim and cross petition until ten days after entry of an order on petitioner's motion to compel arbitration which motion is presently sub judice and the Court having concluded that such an extension of time would be in the interests of justice

NOW THEREFORE, IT IS ORDERED that petitioner's time to answer or otherwise move with respect to respondents' answer containing their counterclaim and cross petition dated June

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*Ex Parte Order Dated July 7, 1975 Extending
Petitioner's Time to Answer*

30, 1975 be and the same is hereby extended ^{until Aug 1, 1975} ~~until ten days after~~
DBB entry of this Court's order upon petitioner's motion to compel
arbitration, and

IT IS FURTHER ORDERED that copies of the within order
shall be served upon the attorneys for respondents.

Dated: New York, New York
July 7, 1975

D B Renshaw
UNITED STATES DISTRICT JUDGE

EX PARTE ORDER DATED JULY 23, 1975 EXTENDING
PETITIONER'S TIME TO ANSWER

filed 7-24-75

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE WAARDEN,	:	EX PARTE ORDER EXTENDING PETITIONER'S TIME TO ANSWER OR OTHERWISE MOVE
Petitioner,	:	
-against-	:	75 Civ. 3074
A. O. SMITH CORPORATION and ARMOR ELEVATOR COMPANY, INC.,	:	(D B B)
Respondents.	:	

-----x

The Court having read and considered the allegations contained in the Petition, respondents' answer containing their counterclaim and cross petition and the Ex Parte Order extending petitioner's time to answer or otherwise move to August 1, 1975, dated July 7, 1975, and petitioner having moved this Court for an order pursuant to Rule 6(b) FRCP further extending petitioner's time to answer or otherwise move in regard to respondents' answer containing their counterclaim and cross petition until ten days after entry of an order on petitioner's motion to compel arbitration which motion is presently sub judice and the Court having concluded that such an extension of time would be in the interests of justice.

NOW THEREFORE, IT IS ORDERED that petitioner's time to answer or otherwise move with respect to respondents' answer

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*Ex Parte Order Dated July 23, 1975 Extending
Petitioner's Time to Answer*

containing their counterclaim and cross petition dated June 30, 1975 be and the same is hereby extended until ten days after entry of this Court's order upon petitioner's motion to compel arbitration, and.

IT IS FURTHER ORDERED that copies of the within order shall be served upon the attorneys for respondents.

Dated: New York, New York
July 23, 1975

D B B
UNITED STATES DISTRICT JUDGE

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OPINION, BONSAL, D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN,

Petitioner,

-against-

A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC.,

Respondents.

42843

U.S. DISTRICT COURT
FILED

JUL 24 1975 AM '75
S.D. OF N.Y.

75 Civ. 3074

Appearances:

SPITZER & FELDMAN, ESQS.
595 Madison Avenue, New York, N.Y. 10022
Attorneys for Petitioner
RONALD J. OFFENKRANTZ, ESQ.
KENNETH GLIEDMAN, ESQ.
Of Counsel

SACKS, MONTGOMERY, MOLINEAUX & PASTORE, ESQS.
437 Madison Avenue, New York, N.Y. 10022
Attorneys for Respondents
WILLIAM J. PASTORE, ESQ.
STEPHEN P. HARBECK, ESQ.
Of Counsel

MEMORANDUM

BONSAL, D. J.

Petitioner N.V. Maatschappij voor Industriële Waarden
("MVIW"), a corporation of the Netherlands Antilles, seeks

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Opinion, Bonsal, D.J.

an order pursuant to 9 U.S.C. §4 directing respondents A. O. Smith Corporation ("Smith") and Armor Elevator Company ("Armor") to proceed to arbitration in accordance with the terms of a written agreement between MVIW and Armor dated October 1, 1973. In addition MVIW seeks an order

"(p)reliminarily and finally enjoining and restraining respondents and each of them directly or indirectly through their officers, agents, or employees from negotiating, discussing, or in any way conveying any information, know-how, documents, or any writings of whatsoever nature in respect of the products and patents licensed under the Agreement dated October 1, 1973 between petitioner and respondents to Westinghouse (Canada) or any other person, firm, corporation, or entity and from purporting to defend or hold itself out as entitled to defend any claim of patent infringement asserted against petitioner or otherwise interfering with or destroying the status quo pending completion of the arbitration proceeding commenced by petitioner's notice and demand for arbitration served upon respondents on June 17, 1975."

Respondent Armor, a Delaware corporation with its principal place of business in Louisville, Kentucky, is a wholly owned subsidiary of respondent Smith, a New York corporation with its principal place of business in Milwaukee, Wisconsin.

By written agreement dated October 1, 1973, MVIW granted Armor an exclusive license for a territory comprising the United States, Puerto Rico, the Virgin Islands, all other

United States possessions, territories and protectorates, and the Dominion of Canada, to use specified United States and Canadian patents for the manufacture and sale of gearless elevators and to practice "Know-how" used in the manufacture of these elevators. Armor agreed to pay 75,000 Australian dollars upon the initial delivery of drawings and data and to pay a royalty for each gearless elevator installed involving the use of the licensed products, which royalty is to be credited against minimum royalties in the aggregate amount of 565,000 Australian dollars payable over a five-year period. Article VIII of the agreement deals with the validity of the patents and provides that if any "claim" relating to the patents is made by a third party, Armor's obligation to pay royalties to MVIW may be suspended. Article XI provides in relevant part:

Section 1. In the event of any breach or threatened breach of this Agreement by either party it is mutually agreed that there is no adequate remedy at law in favor of the other party and that a suit for specific performance or for injunctive relief would be the only effective remedy for such latter party and nothing contained in Section 2 of this Article XI shall limit or preclude such right of specific performance (sic) and injunction, it being agreed that such rights are paramount and that the provisions of Section 2 of this Article XI are subject and subordinate to the provisions of this Section 1.

Section 2. Subject and subordinate to the provisions of Section 1 of this Article XI, any unresolved difference or dispute between the parties concerning the obligation to make payment of any amounts of money provided for in this Agreement or relating to the meaning or application

of the provisions of any of the Articles of this Agreement shall be submitted to arbitration before a panel of three (3) arbitrators in the Borough of Manhattan, City, County and State of New York, in accordance with the Commercial Arbitration Rules then obtaining of the American Arbitration Association and the decision of a majority of the arbitrators shall be final and conclusive upon the parties hereto. . . ."

By written guaranty dated October 1, 1973, Smith guaranteed to MVIW "the due performance and prompt payment of all obligations undertaken by Armor in and by said license agreement, without requiring MVIW first to resort to any action against Armor or any other person or to exercise any right conferred upon MVIW in or by said agreement." The guaranty further provides, "This is an absolute, unqualified, unconditional guaranty of performance and payment and not of collection and it shall remain in full force and effect irrespective of the termination of said license agreement and of whether such termination shall be by Armor or MVIW or otherwise."

On June 17, 1975, MVIW served a notice and demand for arbitration on Smith and Armor, designated its arbitrator, and requested Smith and Armor to designate their arbitrator. MVIW's demand for arbitration described the nature of the dispute as

"Breach of the License Agreement dated October 1, 1973, the performance of which and the payment of all obligations thereunder are guaranteed by A.O. Smith Corporation, including the failure to fulfill the obligation to develop and market the licensed products or gearless elevators embodying the licensed products or embodying the know-how

conveyed pursuant to the Agreement and the failure to pay required royalties; divulgence of confidential know-how to a competitor and attempted sublicensing in violation of the Agreement dated October 1, 1973; conspiracy to keep licensed products off the U.S. and Canadian markets while at the same time precluding licensing by claimant of others."

However, Smith and Armor have not appointed an arbitrator or participated in the arbitration sought by MVIW. They contend in this proceeding that the parties to the October 1, 1973 agreement did not agree to submit to arbitration the issues raised in MVIW's demand for arbitration.

Whether the parties have agreed to submit particular disputes to arbitration must be decided by the Court. Necchi S.p.A. v. Necchi Sewing Machine Sales Corp., 348 F. 2d 693 (2d Cir. 1965), cert. denied, 383 U.S. 909 (1966). In reaching such a decision, arbitration clauses are to be construed liberally and doubts resolved in favor of arbitration. See United Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582-583 (1960); Coenen v. R.W. Pressprich & Co., 453 F. 2d 1209, 1212 (2d Cir.), cert. denied, 406 U.S. 949 (1972).

The first issue raised in MVIW's demand for arbitration is "the failure to fulfill the obligation to develop and market the licensed products or gearless elevators embodying the licensed products or embodying the know-how conveyed pursuant

to the Agreement and the failure to pay required royalties. The papers on file indicate that this issue arises as a result of disputes between the parties concerning whether MVIW has furnished Armor the technical information required by Article III of the agreement; whether the asserted failure of MVIW to furnish the required information relieves Armor of its obligations under the agreement; and whether a letter dated April 29, 1975 from R.H. Fox, Manager, Patent Department, Westinghouse Canada Ltd. to Merl Sceales, constitutes a "claim" within the meaning of Article VIII of the agreement which would suspend Armor's obligation to pay royalties and afford Armor a choice of various courses of action, including defense of the "claim" if MVIW elects not to take over the defense. The Court finds that these disputes are covered by the agreement of the parties to submit to arbitration "any unresolved difference or dispute between the parties concerning the obligation to make payment of any amounts of money provided for in this Agreement or relating to the meaning or application of the provisions of any of the Articles of this Agreement." Accordingly, the first issue raised in MVIW's demand for arbitration is subject to arbitration.

The second issue raised in MVIW's demand for arbitration is "divulgance of confidential know-how to a

competitor and attempted sublicensing in violation of the Agreement dated October 1, 1973." Article III, section 6 of the agreement provides in relevant part:

"Armor shall keep in the strictest secrecy and confidence all technical information which it shall receive pursuant to this Agreement and shall exercise all necessary precautions to safeguard the secrecy of the Patents and Know-how to prevent unauthorized disclosure thereof or of any part or parts thereof. ..."

Article II (b) states that the license granted to Armor "may not be assigned or transferred by Armor or by operation of law or otherwise and confers no right to grant sublicenses." Therefore, construing the arbitration clause with the required liberality, the Court finds that the second issue contained in MVIW's demand for arbitration represents a dispute "relating to the meaning or application of the provisions" of Articles II and III of the agreement.

On the other hand, the Court finds no agreement between the parties to arbitrate the third issue raised in MVIW's demand for arbitration, i.e. "conspiracy to keep licensed products off the U.S. and Canadian markets while at the same time precluding licensing by claimant of others." Such a dispute is outside the provisions of the agreement and cannot reasonably be said to be covered by the language of the arbitration clause.

Smith asserts that it is not a party to the agreement of October 1, 1973 and therefore cannot be compelled to participate in arbitration between MVIW and Armor. MVIW appears to proceed on the theory that the separate existence of Smith and Armor should be disregarded, and Smith should be bound by Armor's obligation to arbitrate. However, the affidavits submitted by MVIW in support of its petition to compel arbitration are not sufficient to support the disregard of the separate existence of Smith and Armor. See Fisser v. International Bank, 282 F. 2d 231 (2d Cir. 1960). Nor does the Court find that the arbitration clause contained in the agreement between MVIW and Armor has been incorporated in Smith's guaranty. Cf. Compania Espanola de Petroleos, S.A. v. Nereus Shipping, S.A., 385 F.Supp. 1155 (S.D.N.Y. 1974). Moreover, the Court does not understand this to be an action on Smith's guaranty; the dispute here is between MVIW and Armor. Therefore MVIW's petition to compel arbitration is granted as against Armor on the first and second issues raised in MVIW's demand for arbitration and denied as to Smith. Armor is directed to name an arbitrator within twenty days of the date of the order to be entered herein.

MVIW's Motion for a Preliminary Injunction

The affidavit of James Spitzer in support of MVIW's motion for a preliminary injunction states that Armor has refused to maintain the status quo and has indicated its

intention to defend the alleged "claim" of Westinghouse Canada Ltd. Spitzer further states that wrongful divulgence of the confidential information given to Armor by MVIW would result in irreparable harm to MVIW.

Injunctive relief is appropriate to preserve the status quo pending arbitration. Erving v. Virginia Squires Basketball Club, 468 F.2d 1064, 1067 (2d Cir. 1972). Disclosure of the confidential information by Armor could result in irreparable injury to MVIW. Indeed, Article XI, section 1 of the agreement between MVIW and Armor recognizes the need for injunctive relief in the event of a breach of the agreement. Armor admits that it has informed MVIW of its intention to defend the alleged "claim" of Westinghouse Canada Ltd. and that it has rejected MVIW's request to cease discussions with Westinghouse Canada Ltd. The reluctance of Armor voluntarily to maintain the status quo pending arbitration was indicated by counsel at oral argument. Accordingly, the motion of MVIW for a preliminary injunction is granted as against Armor. Pending the completion of arbitration, Armor will be enjoined from conveying any information, know-how, documents, or any writings of whatsoever nature in respect of the products and patents licensed under the Agreement dated

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Opinion, Bonsal, D.J.

October 1, 1973 to Westinghouse Canada Ltd. and from otherwise interfering with the status quo. However, MVIW's motion for a preliminary injunction is denied as against Smith without prejudice to renewal should it appear that Smith is wrongfully divulging confidential information given to Armor by MVIW. MVIW is directed to post a bond in the amount of \$250,000 as security for costs and damages which may be suffered by Armor in the event that it is found to have been wrongfully enjoined. F.R.Civ. P. 65(c).

Settle order on notice.

Dated: New York, N.Y.
July 24, 1973.

John P. Bonsal
U. S. D. J.

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ORDER GRANTING PETITION TO COMPEL ARBITRATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

N.V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, :
Petitioner, : ORDER
-against- : 75 Civ. 3074
A. O. SMITH CORPORATION and ARMOR : (D B B)
ELEVATOR COMPANY, INC., :
Respondents. :

Petitioner N.V. Maatschappij Voor Industriele Waarden
having petitioned this Court for an order pursuant to the
United States Arbitration Act 9 U.S.C. §4, for an order compelling
respondents to arbitrate, pursuant to petitioner's Demand
for Arbitration dated June 17, 1975, certain disputes arising out
of the agreement between petitioner and respondent A. O. Smith
Corporation dated October 1, 1973, and having moved this Court
by Order to Show Cause dated June 24, 1975 for an order pre-
liminarily and permanently enjoining and restraining respondents
and each of them from interfering with or destroying the status
quo between the parties pending arbitration of all disputes
among them and for a further order compelling respondents
to proceed with arbitration in accordance with their agreement
and directing respondents jointly to designate their arbitrator
within the number of days to be set by the Court, and said
petition and motion having come on to be heard before me on
the 30th day of June 1975

Order Granting Petition to Compel Arbitration

Now upon reading and filing the Petition dated June 24, 1975, Petitioner's Demand for Arbitration dated June 17, 1975, the Order to Show Cause signed by Hon. Dudley B. Bonsal dated June 24, 1975, the Affidavit of M. James Spitzer sworn to June 23, 1975 and the two Affidavits of M. James Spitzer, each sworn to July 2, 1975, the Memorandum of Petitioner in Support of Proceeding to Compel Arbitration and Memorandum of Petitioner in Support of Application for Preliminary Injunction Pending Arbitration, all together with exhibits annexed thereto, all with proof of due service thereof, in support of said petition and motion and Respondents' Answer, Counterclaim and Cross Petition dated June 30, 1975, the Affidavit of James N. Johnson sworn to June 30, 1975, Respondents' Memorandum of Law and Respondents' Supplemental Memorandum of Law, all together with exhibits annexed thereto, all with proof of due service thereof in opposition thereto and having heard oral argument by Spitzer & Feldman P.C., attorneys for petitioner by Ronald J. Offenkrantz, Esq. in support of said petition and motion and Sacks, Montgomery, Molineaux & Pastore, attorneys for respondents by William Pastore, Esq., in opposition thereto and due deliberation having been had thereon and the Memorandum Opinion of the Court dated July 24, 1975 having been filed,

NOW THEREFORE IT IS,

ORDERED that the petition to compel arbitration is hereby granted to the extent that respondent Armor Elevator Company,

Order Granting Petition to Compel Arbitration

Inc. is hereby compelled to proceed with arbitration of all issues raised in the Demand for Arbitration dated June 17, 1975 with the exception of the issue regarding the alleged "conspiracy to keep licensed products off the U.S. and Canadian markets while at the same time precluding licensing by claimant of others," and it is further

ORDERED that that portion of the petition seeking an order to compel arbitration by A. O. Smith Corporation, pursuant to the Demand for Arbitration dated June 17, 1975 is hereby ✓ in all respects denied, and it is further,

ORDERED that respondent Armor Elevator Company, Inc. name an arbitrator within twenty days of the date of the entry } of this order, and it is further,

ORDERED that respondent Armor Elevator Company, Inc. is hereby preliminarily and finally enjoined and restrained from directly or indirectly, through its officers, agents, or employees, ~~is enjoined and restrained from negotiating, discussing, or in any way conveying~~ any information, know-how, documents, or any writings of whatsoever nature in respect of the products and patents licensed under the Agreement dated October 1, 1973 between petitioner and respondents ~~Armor Elevator Company Inc. to Westinghouse (Canada) or any other person, firm, corporation, or entity and from purporting to defend or hold itself out as entitled to defend any claim of patent infringement asserted against petitioner or otherwise interfering with or destroying the status quo pending completion of the arbitra-~~

DBB

A 176

Order Granting Petition to Compel Arbitration

tion proceeding commenced by petitioner's notice and demand for arbitration served upon respondents on June 17, 1975, and it is further,

ORDERED that that portion of petitioner's motion seeking a preliminary and permanent injunction against respondent A. O. Smith Corporation and seeking an order compelling respondent A. O. Smith Corporation to proceed with arbitration is hereby in all respects denied, and it is further,

ORDERED that petitioner shall ~~not be required to file~~ ^{post a bond in the amount} of \$250,000 within 20 days of the date of this Order as security for costs and damages which may be suffered by Armor Elevator Company Inc in the event that it is found

~~any bond in connection with the preliminary injunction granted hereinabove as against Armor Elevator Company, Inc. to have been wrongfully enjoined (F.R.Civ.P. 65(c))~~

Dated: New York, New York

DBB August 4, 1975

S/ DUDLEY B. BENSON
UNITED STATES DISTRICT JUDGE

PETITIONER'S NOTICE OF MOTION TO DISMISS COUNTERCLAIMS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN,

Petitioner, : NOTICE OF MOTION

:

-against- : 75 Civ. 3074

: (D B B)

A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC., :

Respondents. :

-----x
S I R S :

PLEASE TAKE NOTICE that upon petitioner's motion to
compel arbitration of the disputes between the parties made
pursuant to 9 U.S.C. §4, upon the opinion of Hon. Dudley B.
Bonsal dated July 24, 1975 and the order dated August 6, 1975,
entered thereon and upon the papers upon which said order was
based and upon respondents' Answer, Cross Petition and Counter-
claims, dated June 30, 1975, the undersigned will move this
Court before the Hon. Dudley B. Bonsal, United States District
Judge, at the United States Courthouse, Foley Square, New York,
New York, in Room 1505 on the 22nd day of September, 1975, at
9:30 o'clock or as soon thereafter as counsel can be heard
for an order:

(a) Dismissing the purported counterclaims pursuant
to Rules 12(b)(1) and 12(b)(6) Fed. R. Civ. P.
on the grounds that the Court does not have juris-
diction of the subject matter of respondents'

Petitioner's Notice of Motion - Dismiss Counterclaims

counterclaims and each of them and that the said counterclaims do not set forth claims upon which relief can be granted and fail to comply with Rules 8 and 9 Fed. R. Civ. P. and,

(b) For an order dismissing respondents' counterclaims and each of them and denying declaratory relief in the Court's discretion and in view of this Court's grant of petitioner's motion to compel arbitration and, alternatively, for an order pursuant to 9 U.S.C. §3 staying and restraining respondents from the prosecution of their purported counterclaim on the grounds that said counter-claims contain arbitrable issues pursuant to the agreement,

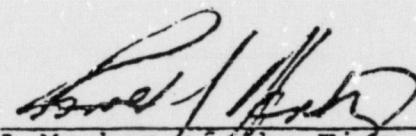
and for such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
August 15, 1975

Yours, etc.

SPITZER & FELDMAN P.C.

By


A Member of the Firm
Attorneys for Petitioner
Office & P.O. Address
595 Madison Avenue
New York, New York 10022

TO:

SACKS, MONTGOMERY, MOLINEAUX
& PASTORE, ESQS.
Attorneys for Respondents
437 Madison Avenue
New York, New York 10022

NOTICE OF APPEAL FROM ORDER FILED AUGUST 6, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN,

Petitioner,

-against-

A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC.,

Respondents

NOTICE OF APPEAL

75 Civ. 3074

Notice is hereby given that Armor Elevator Company, Inc., one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit from each and every part of the order filed in the above-entitled action on August 6, 1975, except the second, fifth and sixth decretal paragraphs thereof.

SACKS, MONTGOMERY, MOLINEAUX &
PASTORE
Attorneys for Respondent Armor
Elevator Company, Inc.
Office & P. O. Address
437 Madison Avenue
New York, New York 10022

RESPONDENTS' AMENDED ANSWER, COUNTERCLAIM AND CROSS PETITION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, : 75 Civ. 3074
Petitioner, :
-against- : RESPONDENT'S AMENDED
A. O. SMITH CORPORATION and ARMOR :
ELEVATOR COMPANY, INC., : AND CROSS-PETITION
Respondents. :
-----x

Respondent Armor Elevator Company, Inc., by its attorneys, Sacks, Montgomery, Molineaux & Pastore as and for its Amended Answer, Counterclaim and Cross-Petition to the Petition herein on information and belief respectfully realleges the original Answer, Counterclaim and Cross-Petition and the prayers for relief therein all as if set forth herein in full, and the same is hereby incorporated by reference, and, as and for additional counterclaims and cross-petitions, alleges and shows to the court:

FOR A FIRST AMENDED COUNTER-
CLAIM AND CROSS-PETITION

A. The Agreement violates antitrust laws of the United States and the State of New York

1. This is a counterclaim for treble damages under 15 USC §15 and §1 of the Sherman Act (15 USC §1). This counter-

claim is brought under 28 USC §1337, 15 USC §15, and 15 USC §22 and applicable laws of the State of New York. Alternatively, this action is also brought under 28 USC §1338(b) together with jurisdiction and venue ancillary to the above-entitled action.

2. The respondent incorporates herein by reference all of the material allegations contained in Respondent's Answer, Counterclaim and Cross-Petition as they may pertain to this counterclaim.

3. MVIW under the Licensing Agreement (hereinafter referred to as the "Agreement") restricted the rights of Armor (as hereinafter set forth) to a "Territory" consisting of the United States of America, Puerto Rico and the Virgin Islands and all other United States possessions and territory in proximity thereto and the Dominion of Canada, collectively and warranted that MVIW was: a) the exclusive licensee for the "Territory" of the Letters Patent and Patent Applications set forth in Schedule "A" attached to the Agreement; b) possessor of proprietary technical information and data alleged to be "Know-how" purportedly to be set forth in Schedule "B" attached to the Agreement which, in turn, was warranted by MVIW in the Agreement to perform the performance criteria of Schedules "C" and "D" attached to the Agreement; and c) exclusive licensee for the "Territory" of the trademarks "Compulogic" and "Thyroglide".

4. MVIW, in violation of the Sherman Act and §340 et seq. of the New York General Business Law illegally divided world markets and imposed upon purchasers illegal resale restrictions in that under the Grant of Rights provision in the Agreement, MVIW granted to Armor an exclusive license to make, use and practice the alleged "Know-how" in the "Territory"; and to Armor and Armor's Sales Affiliates (any legal entity including, without limitation, any firm, corporation or individual carrying on business in the "Territory" to which Armor shall sell the Licensed Products or Gearless Elevators employing the "Licensed Products" for the purpose of resale) or subsidiaries of Armor an exclusive license to use, lease, sell or otherwise disposed of the "Licensed Products" or gearless elevators employing the "Licensed Products" or embodying the alleged "Know-how" in the "Territory", subject to the following limitations and restrictions:

- a) No "Licensed Products" may be manufactured by Armor or sold or leased by it to any customer or through a subsidiary or Sales Affiliate (any legal entity including, without limitation, any firm, corporation, or individual carrying on business in the "Territory" to which

Armor shall sell the "Licensed Products" or gearless elevators employing the "Licensed Products" for the purpose of resale) except for installation in a building located within the "Territory", and the license granted by the Agreement may not be used directly or indirectly except in respect of the "Licensed Products" for installation in the "Territory";

b) Armor shall not under the Agreement export or allow or suffer to be exported outside the "Territory", directly or indirectly or through any Sales Affiliate (any legal entity including, without limitation, any firm, corporation or individual carrying on business in the "Territory" to which Armor shall sell the "Licensed Products" or gearless elevators employing the "Licensed Products" for the purpose of resale) any "Licensed Products" or gearless elevators employing the "Licensed Products" or manufactured directly or indirectly by Armor.

5. MVIW, in violation of the Sherman Act and §340 et seq. of the New York General Business Law illegally divided world markets and imposed upon purchasers illegal resale restrictions in that under the definitions of the Agreement, Armor is not permitted to sell or lease the "Licensed Products" or gearless elevators employing the "Licensed Products" to or through any Sales Affiliate (any legal entity, including, without limitation, any firm, corporation or individual carrying on a business in the "Territory" to which Armor shall sell the Licensed Products or Gearless Elevators employing the "Licensed Products" for the purpose of resale) except a Sales Affiliate located in and carrying on its business in the "Territory" for installation in a building located therein and which Sales Affiliate shall, prior to its advertising, selling or installing any such gearless elevators employing the "Licensed Products," execute and deliver to MVIW an instrument in writing agreeing to be bound by the terms of the Agreement concerning territorial resale restrictions, unless prior written specified approval is obtained from MVIW.

6. MVIW, in violation of the Sherman Act and §340 et seq. of the New York General Business Law illegally divided world markets and imposed upon purchasers illegal resale restrictions in that under the definitions of the Agreement, no sale or lease of the "Licensed Products" or gearless elevators

employing the "Licensed Products" may be made by Armor to or through any subsidiary of Armor unless such legal entity is located within and carrying on its business in the "Territory" and such gearless elevators employing the "Licensed Products" shall be installed in a building located within the "Territory" and such subsidiary shall, prior to its advertising, selling or installing any such gearless elevators employing the "Licensed Products," execute and deliver to MVIW an instrument in writing to be bound by the terms of the Agreement.

7. Under the Agreement, MVIW shall forward to Armor and shall cause E.P.L. to forward to Armor any inquiries received with respect to gearless elevators employing the "Licensed Products" pertaining to the "Territory."

8. Under the Agreement, Armor shall grant to MVIW a royalty-free, non-exclusive license to make, use and sell all improvements of the "Licensed Products" or the fabrication thereof, whether or not patentable, during the term of the Agreement.

9. Under the Agreement, all improvements of the "Licensed Products" or the fabrication thereof, whether or not patentable, shall be deemed part of the "Licensed Products"

which shall not reduce or adversely affect MVIW's rights in full to earned royalties in respect of "Licensed Products."

10. Under the Agreement, neither Armor nor MVIW may assign the Agreement without the prior written consent of the other party.

11. The Agreement shall continue in force and effect for a period of five (5) years and shall automatically renew from year to year thereafter in perpetuity unless a one (1) year advance notice in writing shall have been given by either party to the other.

12. Based upon information and belief, M. James Spitzer represented and acted as agent for Elevator Proprietary, Ltd. (hereinafter sometimes referred to as "E.P.L.") and Lend Lease Corporation, Inc., in the negotiations with Armor leading to the Agreement, that M. James Spitzer did create MVIW and International Property Investment, Ltd. as corporate shells solely and exclusively for the benefit of E.P.L. in executing the Agreement, that M. James Spitzer drafted and prepared the contract causes and provisions resulting in the division of world markets thereunder between E.P.L., Lend Lease Corporation, Inc., International Property Investment, Ltd., MVIW and Armor, that M. James Spitzer unrelentlessly insisted upon the territorial division of

market restrictions and the imposition of territorial resale restrictions upon the licensed and unlicensed products and insisted upon such non-competitive conditions over the objections of Armor; and that M. James Spitzer did, in fact, sign and execute the Agreement as attorney in fact on behalf of MVIW.

13. Under the Agreement, MVIW shall obtain the consent of E.P.L. to permit Armor to employ, without any payment to MVIW or E.P.L., the factory methods or practices of E.P.L. (where such practices are not incorporated in Patents issued to E.P.L.) inside the "Territory."

14. Under the Agreement, Armor and all subsidiaries and sales affiliates (any legal entity, including without limitation, any firm, corporation or individual carrying on business in the "Territory" to which Armor shall sell the "Licensed Products" or gearless elevators employing the "Licensed Products" for the purpose of resale) shall refrain from either directly or indirectly questioning or attacking the validity of the trademarks "Compulogic" or "Thyroglide."

15. That Armor has sought out and is seeking markets outside of the "Territory" of the Agreement for various of its products including but not limited to Taiwan and other geo-

graphic locations in competition with E.P.L. and MVIW but may not do so because of the illegal restraints imposed by MVIW under the Agreement as hereinabove alleged because all or any combination of the foregoing allegations stated and contained in paragraphs 3-12 hereof constitute an attempt by MVIW to conspire to divide world markets in violation of the Sherman Act and §340 et seq. of the New York General Business Law by imposing on Armor unreasonable restraints on sales or resales of the "Licensed Products" which is designed to create for MVIW an illegal monopoly with respect to the Patents and "Know-how" made the subject of the Agreement, rendering the Agreement void al initio and constituting patent and trademark misuse.

B. The Patents and Know-how" are not proprietary and a restrictive licensure thereto is illegal under the antitrust laws of the State of New York and the United States

16. The "Know-how" defined by the Agreement was to include proprietary technical information or devices (including but not limited to that falling within the claims of the Patents) existent at the date of the Agreement, namely on or about October 1, 1973, which was to be sufficient to impart to Armor an adequate knowledge to manufacture the "Licensed Products and MVIW was obligated to make available to Armor the following:

a) A disclosure of the alleged "know-how" as of the effective date of the Agreement, namely on or about October 1, 1973, adequate for production of the "Licensed Products" set forth in Schedule "B" attached to the Agreement which, in turn, was warranted by MVIW in the Agreement to perform the performance criteria of Schedules "C" and "D" attached to the Agreement; and

b) Two (2) copies of drawings, specification and other written material falling within the alleged "Know-how" and used as of the effective date of the agreement, namely on or about October 1, 1973, for the design, manufacture, installation and servicing of the "Licensed Products" set forth in Schedule "B" attached to the Agreement which, in turn, was warranted by MVIW in the Agreement to perform the performance criteria of Schedules "C" and "D" attached to the Agreement.

17. The proprietary "Know-how" to be transferred under

the Agreement was warranted by MVIW to meet the performance criteria of Schedules "C" and "D" attached to the Agreement. Notwithstanding such warranty the "Know-how" transferred was inadequate because it failed to conform to the criteria of Schedules "C" and "D" and was insubstantial and completely void of value and not of a protectible nature, in that such "Know-how" is: a) publicly known in many parts of the world without any action or disclosure by Armor; and b) of a nature which infringes numerous patents in force in the "Territory" (the express covenant of MVIW to the contrary notwithstanding) all contrary to antitrust laws of the State of New York and of the United States.

18. Irrespective of the public nature "Know-how" to be transferred under the Agreement, Armor is required thereby to "keep in the strictest secrecy and confidence all technical information which it shall receive pursuant to" the Agreement and Armor is further required to "exercise all necessary precaution to safeguard the secrecy of the Patents and "Know-how" to prevent unauthorized disclosure thereof or of any part or parts thereof" all contrary to the antitrust laws of the State of New York and of the United States.

C. The Agreement violates public policy incorporated in the antitrust laws.

19. Notwithstanding the warranty of MVIW with respect to the proprietary nature of the "Know-how" "(including any information or devices falling within the claims of the Patents)" MVIW nevertheless refused under the Agreement, to make any representation or warranty, either expressed or implied, as to the validity, exclusivity or enforceability of any of the "Patents," "Trademarks" or "Know-how", the effect of which is an attempt to prohibit Armor from challenging the validity, exclusivity or enforceability of the Patents and the Trademarks and "Know-how," while simultaneously impairing the presumption of validity attaching to the Patents by operation of law.

FOR A SECOND AMENDED COUNTER-
CLAIM AND CROSS-PETITION

20. This is a compulsory counterclaim for a declaratory judgment under Rule 13a of the Federal Rules of Civil Procedure and is brought under the Patent Laws of the United States, United States Code, Title 35, §§271, 281, 283, 284, 285 and Title 28, §§2201, 2202, 1332, 1338a, 1391 and 1400 and ancillary jurisdiction and venue to the above-entitled action.

21. The respondent incorporates herein by reference all of the material allegations contained in the First Amended Counterclaim and Cross-Petition and in Respondent's Answer, Counterclaim and Cross-Petition.

22. On or above October 1, 1973, Armor entered into the Agreement with MVIW in which MVIW for consideration paid by Armor and to be paid sold certain "Know-how" to Armor relating to gearless elevators. In such agreement MVIW warranted that it was the exclusive licensee of United States "Letters Patent" Nos. 3,387,239, 3,536,164 and Application Serial No. 271,083 (now United States Patent No. 3,777,855) and corresponding Canadian Patents Nos. 800,097 and 879,957.

23. In the definition of "Know-how" in paragraph B, page 3 of the Agreement it is stated that "Know-how" includes "any information or devices falling within the claims of the 'Patents'."

24. In accordance with Article II of the Agreement at page 5, MVIW "shall and hereby does grant to Armor an exclusive license to make, use and practice the 'know-how' in the 'Territory'."

25. A justiciable controversy exists with respect to the validity of the patents set forth in paragraph 22 hereof because:

- a) Armor desires to market an elevator system which it has developed known as the Duplex System involving solid state pulse control which is outside the scope of the patents and "Know-how" included in such Agreement;
- b) Armor possesses the necessary manpower and equipment to manufacture the Duplex System; and
- c) Armor has exerted substantial efforts and has invested far in excess of ten thousand dollars in designing and developing the Duplex System which it is substantially ready to market; that Armor had intended to install such Duplex System in a building system in the fall of 1975; that Armor has in fact, withdrawn its offer to construct and sell the Duplex System because of a well grounded fear and reasonable apprehension that if it did so Armor would

face an infringement suit or the damaging threat of one to itself and its customers.

26. As a cause of action defendant alleges that the United States Patents and Canadian Patents set forth in paragraph 22 hereof are invalid and void or unenforceable for the following reasons:

a) The alleged inventions purported to be patented in such Letters Patents were known or used by others in the United States or patented or described in a printed publication in the United States or a foreign country or in an application for patent by another filed in the United States before the alleged inventions thereof by the applications for said Letters Patents;

b) The alleged inventions purported to be patented in said Letters Patents were patented or described in a printed publication in the United States or a foreign country more than one year prior to the date of the applications in the United States on which said Letters Patents

issued; and more than two years in the case
of Canadian Letters Patent.

c) The alleged inventions purported to
be patented in said Letters Patents were in
public use or on sale in the United States by
various persons, more than one year prior to
the date of the applications in the United
States on which said Letters Patents issued;

d) The applicants for said Letters Patents
did not themselves invent the subject matter
purported to be covered by said Letters Patents,
but all material or substantial parts thereof
had, prior to the applications for said Letters
Patents, been invented by, known to and used by
others than said applicants;

e) Before the alleged inventions by the
applicants for said Letters Patents of the said
inventions purported to be covered by said
Letters Patents, the alleged inventions were
made in this country by another who had not
abandoned, suppressed or concealed it;

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Respondents' Amended Answer, Counterclaim and Cross Petition

f) The differences between the subject matter of the alleged inventions of said Letters Patents and the prior art are such that the subject matter as a whole would have been obvious at the time the alleged inventions were made to a person having ordinary skill in the art to which said subject matter pertains;

g) Said Letters Patents were issued by the United States Patent Office and Canadian Patent Office without due investigation and an important part of the relevant prior art was overlooked and other parts of the prior art were improperly applied and construed; wherefore the U.S. Commissioner of Patents and Trademarks and the Canadian Patent Commissioner exceeded their official authority in granting said Letters Patents;

h) The specifications of said Letters Patent do not contain a written description of the alleged inventions, to be covered by said Letters Patents in such full, clear, concise and exact terms to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to practice the alleged inventions thereof.

Respondents' Notice of Motion for an Order
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Respondents' Amended Answer, Counterclaim and Cross Petition

FOR A THIRD AMENDED COUNTER-
CLAIM AND CROSS-PETITION

27. This is a counterclaim for Declaratory Judgment under the Declaratory Judgment Act, Sections 2201 and 2202, Title 28 USC, and brought under Sections 1332 and 1391, Title 28 USC and, alternatively, under Section 1338(b) and ancillary jurisdiction and venue.

28. The respondent incorporates herein by reference all of the material allegations contained in the First and Second Amended Counterclaims and Cross-Petition and in respondent's Answer, Counterclaim and Cross-Petition.

29. The patent monopoly is illegally extended and misused under the Agreement because minimum royalties are required to be paid irrespective of the validity of the Patents.

30. The Agreement is void and unenforceable because of its total lack of consideration, its violation of the Anti-trust laws of the United States of America, its misuse of the Patents and illegal extension of the trademarks, and "Know-how" monopoly, the actions of MVIW and E.P.L. in knowingly entering into the Agreement to supply "Licensed Products" constituting an infringement of patents of others in the "Territory."

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Respondents' Amended Answer, Counterclaim and Cross Petition

Wherefore respondent prays:

(1) That the Patents be declared to be invalid and the monopoly of the trademarks and "Know-how" be declared to be illegally extended because of misuse by MVIW under the Agreement in the following respects:

(a) MVIW has wrongfully extended monopoly control over products and technology which are not protectable;

(b) MVIW has wrongfully extended monopoly control over products and technology in territories in which MVIW has no enforceable rights by, through or under its purported "Know-how", Patents and Trademarks or otherwise;

(c) MVIW has extended an illegal monopoly control by MVIW over the "Licensed Products" beyond the expressed term or useful life of the purported "Know-how", Patents and Trademarks;

(d) MVIW has extended its illegal monopoly control over the "Licensed Products" by illegally restraining free and public disclosure by Armor of the Patented "Licensed Products" contrary to and in blatant disregard of United States Patent Laws;

(e) MVIW has extended its illegal monopoly control over the "Licensed Products" by requiring Armor and third parties who purchase the "Licensed Products" from Armor for resale to refrain from questioning or attacking the validity of the Trademarks; and

(f) MVIW has extended its illegal monopoly control over the "Licensed Products" by precluding Armor from contesting the validity and enforceability of the purported "Know-how" and Patents under the Agreement.

(2) That the Agreement be adjudged in restraint of trade and commerce among the several States and foreign nations or either of them in violation of Section 1 of the Sherman Act and Section 340 of the New York General Business Law and be declared to be illegal for the following reasons:

(a) MVIW has imposed an illegal division of world markets;

(b) MVIW has imposed illegal territorial resale restrictions upon "Licensed Products" and unlicensed products; and

(c) MVIW has misused its "Know-how", Patents and Trademarks in wrongfully exerting monopoly control over the "Licensed Products" as more fully set forth in paragraph 1 of this prayer.

(3) That the Agreement be declared void and unenforceable for the following reasons:

(a) MVIW has misused the Patents and illegally extended the monopoly of the

"Know-how" and Trademarks in the inducement and execution of the Agreement;

(b) The Agreement violates Section 1 of the Sherman Act and Section 340 of the New York General Business Law as more particularly set forth in paragraph 2 of this prayer;

(c) The technical information comprising the "Know-how" with respect to the "Licensed Products" was known to or should have been known to MVIW and E.P.L. during the negotiations and at the execution of the Agreement to infringe several patents existent and enforceable within the "Territory" constituting a fraudulent inducement of the Agreement and material breach thereof as of the date of execution; and

(d) The Patents made the subject of the Agreement are invalid and unenforceable.

(4) That the patent rights allegedly transferred by MVIW and E.P.L. or either of them under the Agreement be declared void and unenforceable.

(5) That the Duplex System presently being developed by Armor be declared not to constitute an infringement of the patent rights or within the scope of the purported "Know-how" of the Agreement.

(6) That MVIW and its officers, directors, agents, representatives, successors, assigns, and all persons and corporations acting on behalf of them or either of them including but not limited to Elevators Proprietary, Ltd., International Property Investment, Ltd. and Lend Lease Corporation, Ltd., each of which is either a parent, subsidiary or alter ego of MVIW be perpetually enjoined from combining, conspiring or agreeing to restrain trade and commerce in the development, manufacture, sale and resale of

elevator systems and component parts thereof among the several States of the United States and with foreign nations, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings, or claiming any rights thereunder, having the purpose or effect of continuing, reviving or renewing any of the aforesaid violations of the Sherman Act and the New York General Business Law.

(7) That an injunction be issued enjoining MVIW from enforcing the Agreement and ordering MVIW to return to Armor forthwith all payments of monies tendered and accepted by MVIW from Armor under the Agreement.

(8) That MVIW be adjudged liable to respondent for all damages and losses, trebled, which relate to the formation, execution and enforcement of the illegal and void Agreement including, without limitation, all costs and disbursements and attorney's fees incurred in this proceeding and in the arbitration proceeding heretofore

instituted by MVIW;

(9) That the foregoing issues fall within the exclusive jurisdiction of this court and therefore the arbitration proceeding heretofore instituted by MVIW be stayed pendente lite; and

(10) That the defendant have such further, general and different relief as the nature of the case may require and the court may deem proper in the premises.

Dated: New York, New York
September 16, 1975

SACKS, MONTGOMERY, MOLINEAUX &
PASTORE

By _____
A Member of the Firm
437 Madison Avenue
New York, New York 10022
Tel. (212) 355-4660

James N. Johnson, Esq.
General Counsel
A. O. Smith Corporation
P. O. Box 584
Milwaukee, Wisconsin 53201

TO:

Spitzer & Feldman, Esqs.
595 Madison Avenue
New York, New York

A 205

RESPONDENTS' NOTICE OF CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N.V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, :
Petitioner, : NOTICE OF CROSS MOTION
-against- : 75 Civ. 3047
A.O. SMITH CORPORATION and ARMOR :
ELEVATOR COMPANY, INC., : (D B B)
Respondents. :
-----x

S I R S :

PLEASE TAKE NOTICE, that upon petitioner's motion to
compel arbitration of certain disputes, pursuant to 9 U.S.C. §4,
upon respondent's Answer, Counterclaim, and Cross-Petition, upon
the opinion of Hon. Dudley B. Bonsal dated July 24, 1975, and the
order dated August 4, 1975, entered thereon and upon the papers
upon which said order was based and upon petitioner's Notice of
Motion dated August 15, 1975, and upon respondent's Amended
Answer, Counterclaim and Cross-Petition, and the affidavit of
William J. Pastore, Esq., the undersigned will move this Court

before the Hon. Dudley B. Bonsal, United States District Judge,
at the United States Courthouse, Foley Square, New York, New York,
in Room 1505 on the 22nd day of September, 1975, at 9:30 o'clock
or as soon thereafter as counsel can be heard for an order:

(1) staying any arbitration in this matter until after
trial of issues raised in respondent's Answer, Counterclaim, and
Cross-Petition, and in respondent's Amended Answer, Counterclaim,
and Cross-Petition;

(2) directing that the issues heretofore referred to
arbitration by order of this Court dated August 4, 1975, be tried
by this Court simultaneously with the determination of the all
encompassing issues raised in respondent's Answer, Counterclaim
and Cross-Petition and in respondent's Amended Answer, Counter-
claim and Cross-Petition;

(3) for such other and further relief as this Court
deems just and proper.

Dated: New York, New York
September 17, 1975

Yours, etc.,

SACKS, MONTGOMERY, MOLINEAUX & PASTORE

By: _____
A Member of the Firm
Attorneys for Respondent
Armor Elevator Company, Inc.
Office & P.O. Address
437 Madison Avenue
New York, New York 10022

TO: SPITZER &
FELDMAN, P.C.
595 Madison Avenue
New York, New York

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AFFIDAVIT OF WILLIAM J. PASTORE IN OPPOSITION TO PETITIONER'S
MOTION AND IN SUPPORT OF RESPONDENTS' CROSS MOTION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, : 75 Civ. 3074
Petitioner, : Affidavit in Opposition
-against- : to Petitioner's Motion
A. O. SMITH CORPORATION and ARMOR : and In Support of Re-
ELEVATOR COMPANY, INC., : spondent's Cross-Motion
Respondents. :

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

WILLIAM J. PASTORE, being duly sworn, deposes and says:

1. I am a partner in the firm of Sacks, Montgomery, Molineaux & Pastore, attorneys for respondent Armor Elevator Company, Inc., (hereinafter "Armor"), and I make this affidavit in opposition to petitioner's motion to dismiss respondent Armor's counterclaims, or in the alternative, to stay prosecution of those counterclaims pending arbitration; in support of respondent's cross-motion: a) for an order staying any arbitration in this matter until after trial of issues raised in respondent's

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Affidavit of William J. Pastore

Answer, Counterclaim and Cross-Petition; and b) directing that the secondary issues heretofore referred to arbitration by order dated August 4, 1975, of Judge Dudley B. Bonsal, be tried by this court simultaneously with the determination of the paramount issues raised in Respondent's Answer, Counterclaim and Cross-Petition and in Respondent's Amended Answer, Counterclaim and Cross-Petition.

2. The respondent has asserted counterclaims in its original Answer, Counterclaim and Cross-Petition and in its Amended Answer, Counterclaim and Cross-Petition (the latter served prior to the return date of these motions) which raise numerous issues with respect to the legality of the Licensing Agreement. Said issues include claims that the Licensing Agreement is in restraint of trade and commerce in antitrust violations of the Sherman Act and the New York General Business Law.

The patents under the Licensing Agreement are invalid and infringe upon the patents of others, the said patents are invalid because of misuse of them, the monopoly of the trademarks and know-how under the Agreement have been illegally extended because of misuse by petitioner.

Furthermore, claims based upon misrepresentation and

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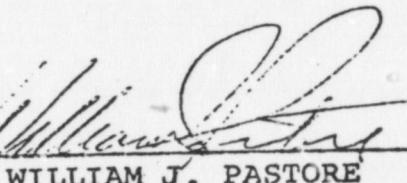
Affidavit of William J. Pastore

substantial breach affecting the underlying purpose of the Licensing Agreement have been set forth as a basis for rescission of the Licensing Agreement.

Each of the foregoing attacks the validity of the Licensing Agreement.

The pleadings speak for themselves and the points developed in respondent's Memorandum of Law submitted herewith in support of respondent's position need not be reiterated.

On the basis of the foregoing, it is respectfully submitted that as a matter of law the court should direct that the issues raised by respondent fall within the exclusive jurisdiction of this court and should be tried by this court and that the arbitration proceeding heretofore instituted by petitioner be stayed pendente lite.



WILLIAM J. PASTORE

Sworn to before me this
17th day of September, 1975

Judith A. Cohen

JUDITH A. COHEN
NOTARY PUBLIC, State of New York
No. 4513691
Qualified in Queens County
Commission Expires March 30, 1977

RESPONDENTS' NOTICE OF MOTION FOR AN ORDER
GRANTING LEAVE TO REARGUE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

N.V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, :
Petitioner, : NOTICE OF MOTION
: :
-against : 75 Civ. 3047
: :
A.O. SMITH CORPORATION and ARMOR : (D B B)
ELEVATOR COMPANY, INC., :
Respondents.:
-----x

PLEASE TAKE NOTICE, that upon the oral determination of the Honorable Dudley B. Bonsal, made on September 22, 1975, which determination granted petitioner's motion to stay the trial of respondent's counterclaims pending arbitration, which determination also denied respondent's motion to stay arbitration in this matter pending trial of said counterclaims, and upon the papers on which said determination was made, the undersigned will move this Court before the Honorable Dudley B. Bonsal, United States District Judge, at the United States Courthouse, Foley Square, New York, New York, in Room 1505 on the 6th day of October, 1975, at 9:30 o'clock in the forenoon of that day, or as soon thereafter

*Respondents' Notice of Motion for an Order
Granting Leave to Reargue*

as counsel can be heard, for an order granting leave to reargue respondent's motion to stay the arbitration in this matter pending trial of respondent's counterclaims on the ground that the Court has overlooked the fact that the Agreement is illegal on its face, and therefore the law requires that the issue of the illegality of the Licensing Agreement under federal and state anti-trust laws, which issue is raised in respondent's counterclaims, must be tried by the court prior to any arbitration in this matter, and for such other and further relief as the court deems just and proper.

Dated: New York, New York
September 29, 1975

Yours, etc.,

SACKS, MONTGOMERY, MOLINEAUX & PASTORE

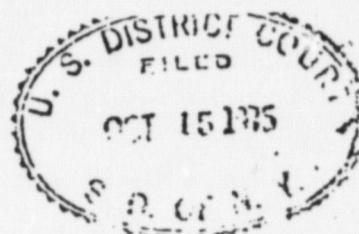
By: _____
A Member of the Firm
Attorneys for Respondent Armor
Elevator Company, Inc.
Office and P.O. Address
437 Madison Avenue
New York, New York 10022

TO: SPITZER & FELDMAN, P.C.
595 Madison Avenue
New York, New York

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ORDER DENYING PETITIONER'S MOTION TO STRIKE COUNTERCLAIMS
AND STAYING FURTHER PROCEEDINGS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



----- x
N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN, : 75 Civ. 3074
Petitioner, : (D B B)
-against- : ORDER
A. O. SMITH CORPORATION and ARMOR
ELEVATOR COMPANY, INC., :
Respondents.
----- x

Petitioner having heretofore petitioned this Court for an order compelling arbitration of certain disputes between the parties pursuant to the provisions of the United States Arbitration Act, 9 U.S.C. §4, and the Court having entered its order on August 6, 1975 granting the petition in part as to Respondent Armor Elevator Company, Inc., and denying it in part, and the Court by orders dated July 7, 1975 and July 23, 1975, having extended petitioner's time to answer or otherwise move with respect to the claims denominated as counterclaims and cross-petitions in respondents' answer dated June 30, 1975 interposed to the petition to compel arbitration, and petitioner having duly moved to strike respondents' counterclaims and cross-petitions as improper in a proceeding under 9 U.S.C. §4, to dismiss said counterclaims and cross-petitions for failure to state a claim upon which relief can be granted, and, alternatively, for an order staying all further proceedings in this Court including a stay of the prosecutions of all claims asserted by respondents and denominated as counterclaims or cross-petitions until com-

*Order Denying Petitioner's Motion to Strike Counterclaims
and Staying Further Proceedings*

pletion of the arbitration proceedings compelled by this Court in its order entered August 6, 1975, and Respondent Armor Elevator Company, Inc., having served and filed on the 17th day of September, 1975 a document denominated as "Respondent's Amended Answer Counterclaim and Cross-Petition" together with an application designated as a "Notice of Cross Motion" dated September 17, 1975, to stay any arbitration in this matter until after trial of issues alleged to be raised in respondents' original answer and "Amended Answer, Counterclaim and Cross-Petition," and for a further order directing that the issues heretofore referred to arbitration by order of this Court entered August 6, 1975 be tried by this Court simultaneously with a determination of "the all encompassing issues raised in respondents' answer, counterclaim and cross-petition and in respondents' amended answer, counterclaim, and cross-petition" and petitioner's motion and Respondent Armor Elevator Company, Inc.'s application having come on to be heard by the Court on September 22, 1975,

Now upon reading and filing petitioner's Notice of Motion dated August 15, 1975, the opinion of Hon. Dudley B. Bonsal dated July 24, 1975 determining petitioner's petition to compel arbitration, the order entered thereupon on August 6, 1975 and the papers upon which said order is based, respondents' Answer, Counterclaim and Cross-Petition dated June 30, 1975 and petitioner's Memorandum in Support of Motion to Dismiss Respondents' Counterclaims, all with proof of due service thereof, in support of petitioner's motion and in opposition to Respondent Armor's application, and

*Order Denying Petitioner's Motion to Strike Counterclaims
and Staying Further Proceedings*

upon reading and filing Respondent Armor's Notice of Cross Motion dated September 17, 1975, and papers upon which it is based, the affidavit of William J. Pastore, sworn to September 17, 1975, and the document denominated as Respondent Armor's Amended Answer, Counterclaim and Cross-Petition dated September 17, 1975 and Respondent Armor's Memorandum of Law dated September 17, 1975, all with proof of due service thereof in opposition to petitioner's motion and in support of Respondent Armor's application and after hearing Spitzer & Feldman P.C., attorneys for petitioner, by Ronald J. Offenkrantz, Esq., in support of petitioner's motion and in opposition to Respondent Armor's application and Sacks, Montgomery, Molineaux & Pastore, attorneys for respondents by William Pastore, Esq., in opposition to petitioner's motion and in support of respondent Armor's application, the Court having determined petitioner's motion and Respondent Armor's application as hereinafter provided,

NOW THEREFORE, it is

ORDERED that petitioner's motion to strike the counter-claims and cross-petitions contained in respondents' original answer dated June 30, 1975, to dismiss each counterclaim and cross-petition for failure to state a claim upon which relief can be granted or, alternatively, to stay further proceedings in this Court and stay respondents from prosecuting each counterclaim and cross-petition pending completion of the arbitral process heretofore compelled by this Court's order entered August 6, 1975 be

Order Denying Petitioner's Motion to Strike Counterclaims
and Staying Further Proceedings

W.H.
and the same is hereby ~~denied, except that~~ ^{are stayed} all further
proceedings in this Court ~~and staying the respondents from prop-~~
~~osing each counterclaim and cross petition denominated as such~~
~~contained in respondents' original answer to the petition to~~
~~compel arbitration or contained in the document denominated as~~
~~Respondent Armor's Amended Answer, Counterclaim and Cross-Petition~~
until the completion of the arbitration proceedings heretofore
~~directed~~ by this Court by its order entered August 6, 1975; and
~~is otherwise denied~~ and it is further

ORDERED that the disposition of petitioner's motion is
without prejudice and with leave to either party to move to
vacate the stay granted herein upon completion of the arbitration
heretofore compelled and without prejudice, in the event of
vacatur of the stay granted herein, to petitioner's right to answer
or otherwise move in respect of each counterclaim or cross-
petition asserted in respondents' original answer or the document
denominated as Respondent Armor's "Amended Answer, Counterclaim
and Cross-Petition" and to assert all defenses and objections
raised by petitioner in its present motion together with all such
additional defenses and objections as may be addressed thereto,
and it is further

W.H.
ORDERED that Respondent Armor's application to stay the
arbitration proceedings heretofore ~~compelled~~ ^{directed} by this Court and for

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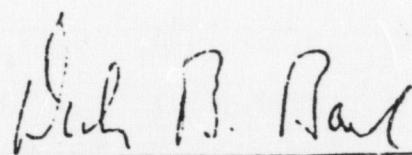
*Order Denying Petitioner's Motion to Strike Counterclaims
and Staying Further Proceedings*

an order directing a trial by the Court of all issues heretofore referred to arbitration be and the same is hereby in all respects denied.

Dated: New York, New York

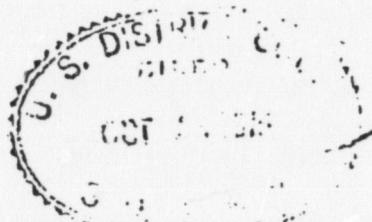
~~September~~, 1975

October 14,


Philip B. Bain
UNITED STATES DISTRICT JUDGE

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ORDER ENDORSED DENYING MOTION FOR REARGUMENT



Endorsement

N.V. MAATSCHAPPIJ VOOR INDUSTRIELE WAARDEN, Petitioner
-against-
A.O. SMITH CORPORATION and ARMOR ELEVATOR COMPANY, INC.,
Respondents.

75 Civ. 3074

Armor's motion for reargument is denied. The anti-trust issues remain with the Court. Compare American Safety Equipment Corp. v. J.P. MaGuire & Co., 391 F.2d 821 (2d Cir. 1968). Article XVII(7) of the Agreement is a severability clause.

It is so ordered.

Dated: New York, N.Y.
October 14, 1975.

A handwritten signature in black ink, appearing to read "J. S. D. J." or "J. S. D. J. Ray".

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NOTICE OF APPEAL FROM ORDER FILED OCTOBER 15, 1975

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE :
WAARDEN, :
Petitioner, : NOTICE OF APPEAL
: :
-against- : 75 Civ. 3074
: :
A. O. SMITH CORPORATION and ARMOR :
ELEVATOR COMPANY, INC., :
Respondents. :

Notice is hereby given that Armor Elevator Company, Inc., one of the respondents above named, hereby appeals to the United States Court of Appeals for the Second Circuit from so much and such parts of an order entered in the above entitled action on October 15, 1975 which stays all further proceedings in the United States District Court, Southern District of New York, until completion of the arbitration proceedings directed by that Court by its order entered August 6, 1975, and from so much and such part of said order which denied the application of respondent Armor Elevator Company, Inc. to stay the arbitration proceedings heretofore directed by the Court, and from so much and such part of said order which denied the application of

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Notice of Appeal from Order Filed October 15, 1975

respondent Armor Elevator Company, Inc. for an order directing trial by the Court of all issues heretofore referred to arbitration.

Dated: New York, New York
October 16, 1975

SACKS, MONTGOMERY, MOLINEAUX & PASTORE
Attorneys for Respondent Armor
Elevator Company, Inc.
Office and P. O. Address
437 Madison Avenue
New York, New York 10022
Tel. (212) 355-4660

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

N. V. MAATSCHAPPIJ VOOR INDUSTRIELE
WAARDEN,

Petitioner-Appellee,

against

A. O. SMITH CORPORATION,

Respondent,
and

ARMOR ELEVATOR COMPANY, INC.,

Respondent-Appellant.

State of New York,
County of New York,
City of New York—ss.:

DAVID F. WILSON being duly sworn, deposes
and says that he is over the age of 18 years. That on the 28th
day of November , 1975, he served one copies of the
Joint Appendix on
Spitzer & Feldman, P.C.

the attorney s for the Petitioner-Appellee
by depositing the same, properly enclosed in a securely sealed
post-paid wrapper, in a Branch Post Office regularly maintained
by the Government of the United States at 90 Church Street, Borough
of Manhattan, City of New York, directed to said attorney s at
No. 595 Madison Avenue, New York () N. Y.,
that being the address designated by t he m for that purpose upon
the preceding papers in this action.

David F. Wilson

Sworn to before me this

28th day of November , 1975.

Courtney Brown
COURTNEY J. BROWN
Notary Public State of New York
No. 31-5472920
Qualified in New York County
Commission Expires March 30, 1976



